TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 315

HANNAH M. SMITH, ADMINISTRATRIX OF THE ESTATE OF OWEN P. SMITH, PETITIONER,

vs.

SPRINGDALE AMUSEMENT PARK, LIMITED; PAUL M. WILLIAMS AND GERALD BROWN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 21, 1930

CERTIORARI GRANTED OCTOBER 13, 1930

(35,237)

(35,237)

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IN THE

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION.

TRANSCRIPT OF RECORD.

Hannah M. Smith, Administratrix of the Estate of Owen P. Smith - - - Plaintiff,

vs. In Equity. No. 485

Springdale Amusement Park, Limited, Paul M. Williams, H. C. Records, G. W. Heintz Gerald Brown, - - - - - Defendants.

BILL OF COMPLAINT—Filed Aug. 19, 1927.

To the Judges of the District Court of the United States in and for the Southern District of Ohio, Western Division.

1.

Hannah M. Smith, Plaintiff, says that she is the widow of Owen P. Smith, deceased; that she is a resident of the County of Dade, and State of Florida, and a citizen of the United States, and of said State of Florida; that the said Owen P. Smith died intestate on, to-wit, January 15th, 1927—in the City of Miami, County of Dade and State of Florida, of which said County and said State Owen P. Smith was a resident and a citizen; that administration proceedings were duly and regularly filed with reference to the estate of said Owen P. Smith in the County Court in and for the County of Dade, State of Florida; that she, the plaintiff was by said Court duly appointed Administratrix of the estate of said Owen P. Smith and immediately thereafter qualified as such administratrix, and has been acting as such from thence until now, and is now so acting, and as such administratrix of the Estate of Owen P. Smith, that she brings this, her bill of complaint, against the Springdale Amusement Park, Limited a limited partnership association, under the laws of the State of Onio, having its principal office and place of business at or near the City of Hamilton, Butler County,

Ohio, in the district and division aforesaid where the acts of infringement herein complained about have been and are being committed, and, Paul M. Williams, H. C. Records, G. W. Heintz, Gerald Brown, citizens and/or residents of the district and division aforesaid.

2.

This is a suit under the patent laws of the United States.

3.

Plaintiff is the owner of letterspatent of the United States No. 1,038,504, granted to him September 10th, 1912, on Lure Conveyors, and of all the rights, title and interests therein and thereunder; that prior to the date of the application on which said patent was granted said Owen P. Smith, was the first, sole and original inventor of the new and useful improvement in Lure Conveyors, set forth in said patent, and applied to the Commissioner of Patents in due form of law for a United States patent thereon, whereupon such due proceedings were had that said letters patent were granted in the name of the United States of America, signed by the proper officer, under the seal of the patent office, and were recorded, together with the specifications relating thereto, in books kept for the purpose in the patent office, whereby said Owen P. Smith, his heirs and assigns, were granted the exclusive right to make, use and vend said invention for seventeen years from and after the granting of said letters patent, in the United States and territories thereof. A printed copy of the specifications and drawings of said patent is attached hereto as Exhibit A. The said invention or improvement of said Owen P. Smith, as set forth in said application for patent relating thereto, was not known or used in this country before his said invention thereof, not patented or described in any printed publication anywhere before his invention thereof, or for more than two years before his said application, not in public use or on sale in this country for more than two years before his said application, not patented in any foreign country by him or his legal representatives or assigns on an application filed more than twelve months before his said application in this country, and was not abandoned. The devices of said patent made, used and sold by said Owen P. Smith, and said plaintiff, have been marked "Patented." or with a suitable abbreviation thereof, together with the date of said patent.

4.

Plaintiff is the owner of letters patent of the United States No: 1,379,224, granted to said Owen P. Smith, May 24, 1921, and all of the rights, title and interests therein and thereunder. Prior to the date of the application on which said patent was granted said Owen P. Smith was the first, sole and original inventor of the new and useful improvement set forth in said patent, and applied to the Commissioner of Patents in due form of law for a United States patent thereon, whereupon such due proceedings were had that said letters patent were granted in the name of the United States of America, signed by the proper officer, under the seal of the patent office, and were recorded, together with the specifications relating thereto, in books kept for that purpose in the patent office, whereby said Owen P. Smith, his heirs and assigns were granted the exclusive right to make, use and vend said Invention for seventeen years from and after the granting of said letters patent, in the United States and the territories thereof. A printed copy of the specifications and drawings of said patent is attached hereto as Exhibit B. The said invention or improvement of said Owen P. Smith, as set forth in said patent, and as set forth in application for patent relating thereto, was not known or used in this country before his invention thereof, not patented or described in any printed publication anywhere before his invention thereof, or for more than two years before his said application, not in public use or on sale in this country for more than two years before his said application, not patented in any foreign country by his or his legal representatives or assigns on any application filed more than twelve months before his said application in this country, and was not abandoned. The devices of said patent made, used and sold by said Owen P. Smith, and the plaintiff, have been marked "Patented", or with a suitable abbreviation thereof, together with the date of said patent.

5.

Plaintiff is the owner of letters patent of the United States No. 1,410,842, granted to Owen P. Smith March 28, 1922, on Dog Racing Amusements, and all of the rights, title and interests therein and thereunder; that prior to the date of the application on which said patent was granted said Owen P. Smith was the first, sole and original inventor of the new and useful improvement in Dog Racing Amusements set forth in said patent, and applied

to the Commissioner of Patents in due form of law for a United States patent thereon, whereupon such due proceedings were had and that said letters patent were granted in the name of the United States of America, signed by the proper officer, under the seal of the patent office, and were recorded, together with the specifications relating thereto, in books kept for that purpose in the patent office, whereby Owen P. Smith, his heirs and assigns were granted the exclusive right to make, use and vend said invention for seventeen years from and after the granting of said letters patent, in the United States and the territories thereof. A printed copy of the Specifications and drawings of said patent is attached hereto as Exhibit C. The said invention or improvement of said Owen P. Smith, as set forth in said patent, and as set forth in application for patent relating thereto, was not known or used in this country before his invention thereof, not patented or described in any printed publication anywhere before his invention thereof, or for more than two years before his said application, not in public use or or sale in this country for more than two years before his said application, not patented in any foreign country by him or his legal representatives or assigns on any application filed more than twelve months before his said application in this country, and was not abandoned. The devices of said patent made, used and sold by said Owen P. Smith, and the plaintiff, have been marked "patented", or with a suitable abbreviation thereof, together with the date of said patent.

6.

Plaintiff is the owner of letters patent of the United States No. 1,507,439, granted to said Owen P. Smith, September 2, 1924, on Starting Cages for Racing Dogs, and all of the rights, title and interests therein and thereunder; that prior to the state of the application on which said patent was granted said Owen P. Smith was the first, sole and original inventor of the new and useful improvement in Starting Cage for Racing Dogs, set forth in said patent, and applied to the Commissioner of Patents in due form of law for a United States patent thereon, whereupon such due proceedings were had that said letters patent were granted in the name of the United States of America, signed by the proper officer, under the seal of the patent office, and were recorded, together with the specifications relating thereto, in books kept for the purpose in the patent office, whereby said Owen P. Smith, his heirs, and assigns were granted the exclusive right to

make, use and vend said invention for seventeen years from and after the granting of said letters patent, in the United States and the territories thereof. A printed copy of the specifications and drawings of said patent is attached hereto as Exhibit D. The said invention or improvement of said Owen P. Smith, as set forth in said patent, and as set forth in application for patent relating thereto, was not known or used in this country before his invention thereof, not patented or described in any printed publication anywhere before his invention thereof, or for more than two years before his application, not in public use or on sale in this country for more than two years before his said application, not patented in any foreign country by him or his legal representatives or assigns on any application filed more than twelve months before his said application in this country, and was not abandoned. The devices of said patent made, used and sold by said Owen P. Smith, and the plaintiff, have been marked "Patented", or with a suitable abreviation thereof, together with the date of said patent.

7.

Plaintiff is the owner of letters patent of the United States No. 1,507,440, granted to said Owen P. Smith, September 2, 1924, on Housing for Conveyor Cars and Tracks, and all of the rights, title and interests therein and thereunder; that prior to the date of the application on which said patent was granted said Owen P. Smith, was the first, sole and original inventor of the new and useful improvement in Housing for Conveyor Cars and Tracks set forth in said patent, and applied to the Commissioner of Patents in due form of law for a United States patent thereon, whereupon such due proceedings were had that said letters patent were granted in the name of the United States of America, signed by the proper officer, under the seal of the patent office, and were recorded, together with the specifications relating thereto, in books kept for that purpose in the patent office, whereby said Owen P. Smith, his heirs and assigns were granted the exclusive right to make, use and vend said invention for seventeen years from and after the granting of said letters patent, in the United States and the territories thereof. A printed copy of the specifications and drawings of said patent is attached as Exhibit E. The said invention or improvement of said Owen P. Smith, as set forth in said patent relating thereto, was not known or used in this country before his invention

thereof, not patented or described in any printed publication anywhere before his said application, not in public use or on sale in this country for more than two years before his said application, not patented in any foreign country by him or his legal representatives or assigns or any application filed more than twelve months before his said application in this country, and was not abandoned. The devices of said patent made, used and sold by the said Owen P. Smith, and the plaintiff have been marked "Patented", or with a suitable abbreviation thereof, together with the date of said patent.

8.

Plaintiff is the owner of letters patent of the United States No. 1,591,569, granted to the said Owen P. Smith, July 6, 1926, on Electric Cars, and all of the rights, title and interests therein and thereunder; that prior to the date of the application on which said patent was granted said Owen P. Smith was the first, sole and original inventor of the new and useful improvement in Electric Cars set forth in said patent, and applied to the Commissioner of Patents in due form of law for a United States patent thereon, whereupon such due proceedings were had that said letters patent were granted in the name of the United States of America, signed by the proper officer, under the seal of the patent office, and were recorded, together with the specifications relating thereto, in books kept for that purpose in the patent office, whereby Owen P. Smith, his heirs and assigns were granted the exclusive rights to make, use and vend said invention for seventeen years from and after the granting of said letters patent, in the United States and the territories thereof. A printed copy of the specifications and drawings of said patent is attached hereto as Exhibit F. The said invention or improvement of said Owen P. Smith, set forth in said patent, and as set forth in said patent, and as set forth in application for patent relating thereto, was not known or used in this country before his invention thereof, not patented or described in any printed publication anywhere before his invention thereof, or for more than two years before his said application, not in public use or on sale in this country for more than two years before his said application not patented in any foreign country by him or his legal representatives or assigns on any application filed more than twelve months before his said application in this country, and was not abandoned. The devices of said patent made, used and sold by said Owen P. Smith,

and the plaintiff, have been marked "Patented", or with a suitable abbreviation thereof, together with the date of said patent.

9.

Plaintiff is the owner of letters patent of the United States No. 1,630,811, issued to said Owen P. Smith, on May, 31, 1927, entitled "Starting Cage for Dog racing and the like," and all the rights title and interest therein and thereunder; that prior to the date of application on which said patent was granted, said Owen P. Smith was the first, sole and original inventor of the new and useful improvements in starting cage for racing dogs and the like set forth in said patent, and applied to the Commissioner of Patents in due form of law for a United States patent thereon, whereupon due proceedings were had and said letters patent were granted in the name of the United States of America to said Owen P. Smith, his heirs, executors, administrators, and assigns, the exclusive right to make, use and vend said invention for seventeen years in the United States and the territories thereof, from and after the grant of said letters patent, a certified copy of which letters patent the plaintiff is here in court ready to produce. A printed copy of the specification claims and drawings of said patent is attached hereto as Exhibit G. The said invention or improvement of said Owen P. Smith, as set forth in said patent, and as set forth in the application upon which said patent was granted, was not known or used in this country before his invention thereof or patented or described in any printed publication anywhere before his invention thereof, or for more than two years before his said application, or in public use or on sale in this country for more than two years before his application, or patented in any foreign country by him or his legal representatives or assigns or any application by them more than twelve months before his said application for patent in this country, and his said was not abandoned. The devices of said patent made used and sold by said Owen P. Smith, and the plaintiff, have been marked "Patented", or with a suitable abbreviation thereof, together with the date of said patent.

10.

Plaintiff is the owner of letters patent of the United States No. 1,630,812, issued to Owen P. Smith, on May, 31, 1927, entitled Traction Car and the Like, and all of the rights, title and interests therein and thereunder;

that prior to the date of the application on which said patent was granted said Owen P. Smith was the first, sole and original inventor of the new and useful improvement in Traction Car and the Like set forth in said patent, and applied to the Commissioner of Patents in due form of law for a United States patent thereon, whereupon such due proceedings were had that said letters patent were granted in the name of the United States of America, signed by the proper officer, under the seal of the patent office, and were recorded, together with the specification and drawings relating thereto, in books kept for that purpose in the patent office, whereby Owen P. Smith, his heirs, and assigns were granted the exclusive right to make, use and vend said invention for seventeen years from and after the granting of said letters patent, in the United States and the territories thereof. A printed copy of the specifications and drawings of said patent is attached hereto as Exhibit H. The said invention or improvement of said Owen P. Smith, as set forth in said patent, and as set forth in said application for patent relating thereto, was not known or used in this country before his invention thereof, not patented or described in any printed publication anywhere before his application thereof, or for more than two years before his said application, not in public use or on sale in this country for more than two years before his said application, not patented in any foreign country by him or his legal representatives or assigns on any application filed more than twelve months before his said application in this country, and was not abandoned. The devices of said patent made, used and sold by said Owen P. Smith, and the plaintiff, have been marked "Patented", or with a suitable abbreviation thereof, together with the date of said patent.

11.

The said inventions or improvements of said letters patent respectfully are capable of conjoint use as well as of separate use, and have been used conjointly as well as separately by the plaintiff and said Owen P. Smith in various parts of the country, and have been and are being used by the defendant, Springdale Amusement Park, Limited, and by the other defendants, co-operating with and aiding and abetting said Springdale Amusement Park, Limited, and are being so used in the district and division aforesaid, all within six years last past, and without license or right.

12.

The defendant, Springdale Amusement Park, Limited, and the other defendants, well knowing the plaintiff's rights in the premises and without license or right thereto, has been and is engaged in the business of conducting a certain amusement enterprise near the City of Hamilton, County of Butler, and State of Ohio, aforesaid, in which dogs race over a course in pursuit of a lure, for instance, in the form of a rabbit, which is caused to travel on said course in advance of the dogs, exciting the dogs to strenuous efforts at running, and in said business and enterprise said, Springdale Amusement Park, Limited, and said individual defendants, have made or caused to be made, certain apparatuses and devices embodying the subject matter and the claims of said several letters patent herein listed, and having used and caused to be used said apparatuses and devices in the District and Division aforesaid, for public entertainment and at cost and expense to the public, such as admission fees, and with great profit to the defendants, and each of them, and said defendants have thereby infringed the patents to said Owen P. Smith herein described, and each thereof and is continuing to infringe said letters patent and each thereof in its said practice and enterprise, and threatens to continue said infringements, and said infringements have damaged the plaintiff and have resulted in profits to the defendants, and each of them, which rightfully belong to the plaintiff.

13.

That for several years past and particularly from the month of February, 1921, and up to the present time said Owen P. Smith and plaintiff, the immediate representative of the said Owen P. Smith estate, have made, used and sold the invention or inventions covered by the aforesaid several letters patent; and that prior to the Autumn of the year 1925, no person other than the said Owen P. Smith, or his representatives and licensees, had assumed to make or sell the inventions or devices embodying said inventions, or any of them. That for several years, and prior to the Autumn of the year 1925, all persons, other than the said Owen P. Smith, and his authorized agents or licensees, refrained from using or selling the invention or inventions covered by said several letters patent, for the reason of the existence of said several letters patent, and of the application for letters patent which have since the

year 1925 matured into letters patent, although it would have been to the interest of third persons to adopt and employ such inventions. That during the period from the grant of said letters patent and each of them there has been a general public acquiescence in their novelty and validity; and that the said Owen P. Smith and his associates, agents or licensees have spent great sums of money in carrying on the inventions covered by said letters patent, and introducing the said inventions into gainful use, and that said use by said Owen P. Smith had been exclusive, and without question on the part of the public, from the year 1921 until the Fall of 1925.

14.

That the defendant, G. W. Heintz, was for sometime prior to the year 1927, actively engaged with or in association with the said Owen P. Smith in the operation of race tracks for the racing of greyhounds, and that during his said employment by the association with said Owen P. Smith, the said Defendant G. W. Heintz actively participated in the exploitation of the said inventions of the said Owen P. Smith, and the said Heintz lauded and proclaimed the novelty and importance of the said several inventions, all of which were covered by patents at that time or by letters patent issued since such employment or association of said G. W. Heintz, by or with said Smith has ceased, and assisted and was instrumental in bringing to the attention of the public the value and utility as well as the fact that the said Owen P. Smith was the exclusive owner of the right to make, use and vend the said several inventions; that after leaving the employ of or association with said Smith and of the owners of track licensed by said Owen P. Smith, the said G. W. Heintz, entered into a wrongful and unlawful conspiracy with the defendants Springdale Amusement Park, Limited, and the individual defendants herein named and others who are unknown to the plaintiff, to commit and cause to be committed the the aforesaid unlawful making, using, selling or leasing of apparatus embodying the inventions of the several aforesaid letters patent to Owen P. Smith; that in pursuance of said conspiracy the said defendant, G. W. Heintz, and others instigated and initated the aforesaid making using and selling of the said apparatus for their own profit, benefit and/or advantage, and in carrying out said consiparacy, formed or caused to be formed the defendant, Springdale Amusement Park, Limited, in an attempt to carry on the aforesaid making, using, selling or

leasing said apparatuses or causing same to be carried on without subjecting them or either of them, to personal liability therefor, and for this purpose, and by some other means unknown to the plaintiff said individual obtained and secured the ownership or control of and power to control and operate the defendant, Springdale Amusement Park, Limited, and have since about the first of June, in the year 1927, and now operate the said defendant, Springdale Amusement Park Limited, and have continued to direct and control said Springdale Amusement Park, Limited, during the period since about the first day of June, 1927, controlling through said Springdale Amusement Park, Limited, the aforesaid making, using selling or leasing of said infringing apparatuses for their own benefit, profit and advantage, using and employing the defendant Springdale Amusement Park, Limited, as a cloak or shield thereof. Plaintiff has been unable to ascertain all of the relations, consipiracies and other acts and doings of the individual defendant as hereinabove generally alleged on information and belief, and prays full discovery thereof in the answers to this bill and otherwise as the court may direct.

15.

And your plaintiff further shows that in the months of November and December, 1926, George W. Heintz, one of the defendants herein mentioned, was manufacturing selling or leasing the various apparatuses patented by the said Owen P. Smith, namely the Starting Cage for Racing Dogs, United States Patent, 1,507,439, Housing for Conveyor Cars and Tracks, United States Patent No. 1,507,440, and Dog Racing Amusements, United States Patent No. 1,379,224 embodying the inventions set forth in the various patents granted to the patentee Owen P. Smith, and covered by said letters patent issued to said Smith, and in violation and infringement of the rights of said Owen P. Smith and the plaintiff under the said letters patent No. 1,038,504, United States Patent No. 1,379,-224, United States Patent No. 1,410,842, United States Patent No. 1,507,439, United States Patent No. 1,507,440 and United States Patent No. 1,591,569, and that on or about the 15 day of November, 1926, the said Owen P. Smith brought his bill in equity in the District Court of the United States for the Southern District of Louisiana, against the said George W. Heintz and other defendants, and in said suit complained that the defendant Heintz et al had infirnged and threatened the further infringe-

ment of said letters patent, and that he thereupon moved the Court for a preliminary injunction therein, that said motion came up to be heard in said Court before the Honorable Louis Burns, Judge of the said District Court, on or about the 1st day of December, 1926, on affidavits and proofs filed by the respective parties, and was argued by Counsel; and that upon consideration of said proofs and arguments, the Court of the 20th day of December, 1926, ordered an injunction as prayed for restraining the defendant from infringing the said letters patent, United States patent No. 1,379,224, United States Patent No. 1,507,439, United States Patent No. 1,507,440, and the said injunction was accordingly granted and issued; that the said defendant filed his answer to the said bill of complaint and the said cause came on to be heard on the pleadings and proofs and was argued on the 12th day of May, 1927, before the Honorable Louis Burns, Judge of the said District Court, by counsel for the respective parties; and on the 22nd day of July, 1927, the Court ordered a decree for the plaintiff, Hannah M. Smith, Administratrix, whom had ben substituted as plaintiff owing to the death of said Owen P. Smith, affirming the validity of the said letters patent, and a perpetual injunction as prayed for restraining said defendant for infringing said letters patent; and said perpetual injunction was accordingly granted and issued. Plaintiff prays that defendant, Springdale Amusement Park, Limited, and said individual defendants, and officers and members of said partnership defendants, and the respective servants, agents and employees of the defendants respectively, may be enjoined, both permanently and during the pendency of this cause, from the further infringement of plaintiff's said patents and each thereof, and from the further use of the several and various apparatuses and devices now being used by said Springdale Amusement Park, Limited, and other defendants herein named, which are an infringement of the plaintiff's said patents or any thereof, and from selling or disposing of said infringing apparatuses or devices, whereby the plaintiff's said patents may be infringed by others; and, further, that said Springdale Amusement Park, Limited, and the individual defendants may be ordered to deliver up to be destroyed, or to be impounded, said infringing apparatuses and devices; and, further, that the defendants and each of them may be ordered to account for and to pay to the Plaintiff the profits of the defendants and each of them, respectively derived from said infringing business or practice, and also plaintiff's damages occasioned by said

infringement, and a sum in excess thereof not exceeding three times the actual damages and profits as to your Honors shall seem meet; and that the plaintiff may have all such other and further relief in the premises as to equity shall appertain, including all suitable and proper discovery.

The plaintiff further prays that the usual process may issue out of this Court directed to say Springdale Amusement Park, Limited, a limited partnership association, defendants, said Paul M. Williams, H. C. Records, G. W. Heintz, Gerald Brown the individual defendants commanding them and each of them to appear and answer this bill of complaint, but not under oath, an answer under oath being hereby expressly waived.

C. Arthur Anderson,
Of Counsel.

Duly verified.

Murray and Zugelter,
Solicitors for Plaintiff.

MOTION FOR PRELIMINARY INJUNCTION—Filed Aug. 19, 1927.

Attached herewith and marked exhibits I, J, K, L, and M are:

Copy of the Decision of the District Court for the Eastern District of Louisiana; copy of page 15 of the Hamilton Daily News of Hamilton, Ohio, for June 22, 1927; an official program issued from Springdale Amusement Park, Ltd.; general admission ticket for Springdale Amusement Park, Ltd.; and a copy of page 8 from the Cincinnati Commercial Tribune for Monday, August 15, 1927, respectively,

Motion for Preliminary Injunction

The plaintiff requests a hearing at the earliest opportunity on this motion for a preliminary injunction as prayed for in the bill of complaint.

Murray and Zugelter,
Solicitors for Plaintiff.

Cincinnati, Ohio,
August 15, 1927.

RETURN ON AUGUST 23, 1927, BY THE UNITED STATES MARSHAL OF SUBPOENA ISSUED AUGUST 19, 1927—Filed August 23, 1927.

Received this Writ on the 19th day of August, A. D. 1927.

And on the 19th day of August, A. D. 1927, I served same on the within named Springdale Amusement Park, Limited, a limited partnership association, by delivering a true copy of this writ, with the endorsements thereon, to Paul M. Williams, as Chairman of said partnership association, by handling same to him personally at Cincinnati, Ohio.

And on the same day I served the within named Paul M. Williams, individually, by delivering to him personally a true copy of this writ, with the endorsements thereon, at Cincinnati, Ohio;

And on August 22, 1927 I served the within named Gerald Brown by delivering to him personally a true copy of this writ, with the endorsements thereon by handing same to him near Hamilton, Ohio;

And on August 23, 1927 I delivered a true copy of this writ, with the endorsements thereon for the within named H. C. Records and for the within named G. W. Heintz, to the aforesaid Paul M. Williams, Chairman as aforesaid, at room 218 Gibson Hotel, Cincinnati, Ohio, their usual place of residence.

Stanley Brothwick,
U. S. Marshal, S. D. O.
By Jno. W. Hook, Deputy.

Sundry affidavits by plaintiff in support of Motion for Preliminary Injunction (filed August 27, 1927.)

ENTRY ALLOWING AMENDMENT TO BILL OF COMPLAINT—Filed Aug. 25, 1927.

Plaintiff is given leave to file amendment to the bill of complaint and same is forthwith filed.

Hough, Judge.

AMENDMENT TO BILL OF COMPLAINT—Filed Aug. 25, 1927.

Plaintiff further avers, upon information and belief, that Paul M. Williams, H. C. Records, George W. Heintz and Gerald Brown, are members of said limited partnership and compose the same, and that they and each of them have a regular and established place of business within the Western Division within said Southern District of Ohio.

C. Arthur Anderson.

(Duly verified)

ORDER—Filed Aug. 26, 1927.

This day this cause came on to be heard on the application of the plaintiff for a preliminary injunction, the several defendants appearing by their counsel and requesting a postponement of such hearing. On consideration by the Court and with consent of the parties herein, the plaintiff's application is set for hearing at Steubenville, Ohio, on September 8th, 1927.

It is further ordered that plaintiff file with the Clerk of this Court her affidavits to be used by her in chief at an early date and also copies of such affidavits for the use at an early date and also copies of such affidavits for the use of the defendants; that defendants file their answering affidavits in this Court and also copy of same for the use of the Plaintiff on or before September 5th, 1927.

Benson W. Hough.

AFFIDAVIT OF GERALD BROWN—Filed Sept. 3, 1927.

State of Ohio, Hamilton County, ss:

Gerald Brown, being first duly sworn, says that he is a resident of San Francisco, California, that he is employed as a judge of dog races conducted at the Springdale Amusement Park in Butler County, Ohio, that he has no interest, financial or otherwise in said park or in the operation of its amusements or concessions other than the salary he receives for the performance of his duties as judge of races, that he has no interest, financial or otherwise in any equipment used in said park.

And further affiant sayeth not.

J. W. Heintzman and Wm. E. Hess.

Affidavit of Gerald Brown

Gerald Brown, being first duly sworn, says that the facts stated in the foregoing affidavit are true.

Gerald Brown.

Sworn to before me and subscribed in my presence this 25th day of August, 1927.

Wm. E. Hess,
(Seal) Notary Public, Hamilton County, Ohio.

My commission expires
Apr. 1-1928.

SPECIAL MOTION BY PAUL M. WILLIAMS TO DISMISS THE BILL OF COMPLAINT AS AGAINST HIM AND TO QUASH AND SET ASIDE THE RETURN OF THE MARSHAL AS TO SERVICE— Filed September 3, 1927.

Appearing solely for the purpose of making this motion and not intending to submit himself to the jurisdiction of this Court as a party hereto, comes now Paul M. Williams, one of the individuals named in the Bill of Complaint herein as a defendant, and moves to dismiss the Bill, of Company and to quash and set aside the return of the Marshal insofar as the same relates to the said Paul M. Williams on the following grounds:—

(1) That said Paul M. Williams is not now and was not at the time of the filing of this Bill of Complaint and never has been an "inhabitant" of the Western Division of the Southern District of Ohio, of the United States District Court;

(2) That said Paul M. Williams is not now and was not at the time of the filing of the Bill of Complaint herein and never has been a "citizen" of Ohio, but is now, was at the time of the filing of the Bill of Complaint and has for several years past been a citizen of the State of Kentucky;

Special Motion to Dismiss Bill of Complaint, etc.

(3) That said Paul M. Williams did not have at the time of the filing of the Bill of Complaint herein, has not or never did have a "regular and established place of business" in the Southern District of Ohio, Western Division, of the United States District Court.

Paul M. Williams,
By J. W. Heintzman,
W. E. Hess,
Paul Bakewell,
His Solicitors.

(Duly verified)

SPECIAL MOTION BY GERALD BROWN TO DISMISS THE BILL OF COMPLAINT AS AGAINST HIM AND TO QUASH AND SET ASIDE THE RETURN OF THE MARSHAL AS TO SERVICE—Filed September 3, 1927.

Appearing solely for the purpose of making this motion and not intending to submit himself to the jurisdiction of this Court as a party hereto, comes now Gerald Brown, one of the individuals named in the Bill of Complaint herein as a defendant, and moves to dismiss the Bill of Complaint and to quash and set aside the return of the Marshal insofar as the same relates to the said Gerald Brown on the following grounds:—

(1) That said Gerald Brown is not now and was not at the time of the filing of this Bill of Complaint and never has been an "inhabitant" of the Western Division of the Southern District of Ohio, of the United States District Court;

(2) That said Gerald Brown is not now and was not at the time of the filing of the Bill of Complaint herein and never has been a "citizen" of Ohio, but is now, was at the time of the filing of the Bill of Complaint and has for several years past been a citizen of the State of California;

Special Motion to Dismiss Bill of Complaint, Etc.

(3) That said Gerald Brown did not have at the time of the filing of the Bill of Complaint herein, has not or never did have a "regular and established place of business" in the Southern District of Ohio, Western Division, of the United States District Court.

Gerald Brown,
By J. W. Heintzman,
W. E. Hess,
Paul Bakewell,
His Solicitors.

(Duly verified)

Like motions to those of Paul M. Williams and Gerald Brown were filed by George W. Heintz and H. C. Records.

AFFIDAVIT OF PAUL M. WILLIAMS—Filed Sept. 3, 1927.

State of Ohio, Hamilton County, ss:

Paul M. Williams, being first duly sworn, says that he is a resident of Newcastle, Kentucky; that with others he is associated as a partner in the ownership and operation of Springdale Amusement Park, Limited, located in Fairfield Township, Butler County, Ohio.

Affiant says that with his associates, during the month of March, 1927, he acquired the real estate in Fairfield Township now used as the Springdale Amusement Park, Limited; that the consideration therefor was Twenty-five thousand one hundred and twenty five dollars ($25,125.00), a cash payment of Eight thousand five hundred dollars ($8,500.00), being made about the time of the delivery of the deed and notes given to secure the balance in two equal annual installments; that after acquiring said property, affiant and his associates graded and improved the same, erected a grand stand and other necessary buildings and structures at an expense of over One hundred thousand dollars ($100,000.00), all of which has

been paid; that dog races are conducted at said track nightly except Sunday, and that the gate receipts average approximately Fifteen hundred dollars ($1500.00) per night; that in addition thereto there is realized from concessions, to-wit: confections, cigars, sandwiches, beverage and programs, an average of approximately Five hundred dollars ($500) per night, and that if he be not permitted by the motion for temporary injunction, to hold said dog races, with the devices as now used in the operation thereof, that he will suffer loss of concession revenues as well as being subject to damage for service contracts entered into on account of the operation of said track.

Affiant further says that the defendant, George W. Heintz, was not at the time of the filing of the Bill of Complaint in this case, and is not now one of the partners in Springdale Amusement Park, Limited, and that he did not hold at that time, and does not now hold any stock or interest whatsoever in said partnership.

And further affiant sayeth not.

Paul M. Williams.

Sworn to before me and subscribed in my presence this 3rd day of September, 1927.

(Seal) Ann Mannion,
Notary Public, Hamilton County, O.

My commission expires
Dec. 13, 1929.

ORDER EXTENDING TIME TO PLEAD

—Filed Sept. 9, 1927.

Upon application and for good cause shown, the defendant, Springdale Amusement Park, Limited, is given until October 8th, 1927, to plead to the Bill of Complaint herein.

Benson W. Hough, Judge.

SEPARATE ANSWER OF SPRINGDALE AMUSEMENT PARK, LIMITED—Filed Sept. 27, 1927.

Now comes Springdale Amusement Park, Limited, one of the defendants named in the bill of complaint in this case, by its solicitors and files this its separate answer to the bill of complaint herein:

(1) Answering clause numbered "1" of the bill of complaint herein, said defendant denies that Hannah M. Smith, plaintiff in this case, is the widow of Owen P. Smith, deceased; denies that Owen P. Smith died intestate, as alleged in the bill of complaint; denies that administration proceedings were duly or regularly filed with reference to the estate of said Owen P. Smith, as alleged in the bill of complaint; denies that plaintiff was duly appointed administratrix of the estate of said Owen P. Smith, as alleged in the bill of complaint; denies that said Hannah M. Smith duly qualified as administratrix of the estate of said Owen P. Smith.

As to each and all of said allegations in the bill of complaint, defendant requires strict proof on the part of plaintiff.

Moreover, defendant denies that, at the time of the death of said Owen P. Smith, said Owen P. Smith was the owner of all right, title and interest in and to all or any of the United States letters patent named and specified in the bill of complaint herein; and defendant denies that any acts of infringement of all or any of the letters patent named in the bill of complaint herein have been done or committed or were being done or committed by this defendant at or near the City of Hamilton, Butler County, Ohio, or within the Western Division of the Southern District of Ohio; and denies that defendant has at any time anywhere infringed all or any of the several letters patent referred to in the bill of complaint herein; defendant also denies that any of the individual defendants or that all of the individual defendants (Williams Records, Heintz and Brown) are, or were at the time of the filing of the bill of complaint, citizens, inhabitants, or residents of the Southern District of Ohio, Western Division, or that all or any of said individual defendants have infringed, or were infringing at the time of the filing of the bill of complaint herein, all or any of the several letters patent named in the bill of complaint.

As to all or any of said allegations in Clause 1 of the bill of complaint herein, Springdale Amusement Park, Limited, denies the same and requires strict proof thereof on the part of plaintiff.

Separate Answer of Springdale Amusement Park, Ltd.

(2) Answering Clause numbered "2", defendant admits that in and by the bill of complaint herein it is attempted to state or set forth a suit under the patent laws of the United States but that said suit, as will appear at the hearing, is an unconscionable one without any foundation in fact or in law for the bringing of the same and should be dismissed for want of equity and at plaintiff's costs.

(3) Answering Clause "3" of the bill of complaint herein, which purports to relate to alleged U. S. Letters patent No. 1,038,504, dated Sept. 10, 1912, to Owen P. Smith, for Lure Conveyor, defendant denies that plaintiff herein is the owner of said patent or any right, title and interest therein; denies that said letters patent were duly and properly granted; denies that Owen P. Smith was the true, original and sole inventor of the alleged and pretended invention the subject-matter of said letters patent; denies that the thing patented by said letters patent discloses an invention patentable under the law; denies that said Owen P. Smith duly or properly applied for said letters patent; denies that the alleged invention the subject-matter of said letters patent was not known or used in this country before the alleged and pretended invention thereof by said Owen P. Smith; denies that the thing patented and described in said letters patent had not been patented and described in prior patents or printed publications before the alleged and pretended invention thereof by the said Smith or more than two years before said Smith applied for said letters patent; denies that the said alleged invention the subject-matter of said letters patent was not in public use and on sale in this country for more than two years before Smith applied for said letters patent; denies that the same, if ever invented by said Smith, had not been abandoned by him before applying for said letters patent.

As to each and all of these allegations in Clause 3 of the bill of complaint herein respecting said Smith patent No. 1,038,504, dated Sept. 10, 1912, this defendant denies the same and requires strict proof thereof and of the said letters patent themselves on the plaintiff's part.

Further answering Clause 3 of the bill of complaint herein, this defendant denies that the thing patented by said Smith patent No. 1,570,439 has ever been made, or sold by said Owen P. Smith or by plaintiff and denies that said Owen P. Smith or this plaintiff has marked any device or devices made under and in accordance with the thing patented by said Smith patent No. 1,038,504 with the word "patented" together with the day and

year the said alleged letters patent No. 1,038,504, were granted as alleged in the bill of complaint herein and as required by Sec. 4900 R. S. U. S.

As to all of these allegations in the bill of complaint defendant denies the same and requires strict proof thereof on the part of plaintiff.

Moreover, this defendant denies that it was ever duly notified of the alleged infringement of said Smith patent No. 1,038,504, or that this defendant continued, after such notice, to make, use or vend the thing patented by said Smith patent No. 1,038,504.

(4) Answering Clause "4" of the bill of complaint herein, which purports to relate to alleged U. S. letters patent No. 1,507,439, dated Sept. 2, 1924, to Owen P. Smith, for Dog Racing Amusement, defendant denies that plaintiff herein is the owner of said patent or any right, title and interest therein; denies that said letters patent were duly and properly granted; denies that Owen P. Smith was the true, original and sole inventor of the alleged and pretended invention the subject-matter of said letters patent; denies that the thing patented by said letters patent discloses an invention patentable under the law; denies that said Owen P. Smith duly or properly applied for said letters patent; denies that the alleged invention the subject-matter of said letters patent was not known or used in this country before the alleged and pretended invention thereof by said Owen P. Smith; denies that the thing patented and described in said letters patent had not been patented and described in prior patents or printed publications before the alleged and pretended invention thereof by the said Smith or more than two years before said Smith applied for said letters patent; denies that the said alleged invention the subject-matter of said letters patent was not in public use and on sale in this country for more than two years before Smith applied for said letters patent; denies that the same, if ever invented by said Smith, had not been abandoned by him before applying for said letters patent.

As to each and all of these allegations in Clause 4 of the bill of complaint herein respecting said Smith patent No. 1,379,224, dated May 24, 1921, this defendant denies the same and requires strict proof thereof and of the said letters patent themselves on the part of plaintiff.

Further answering Clause 4 of the bill of complaint herein, this defendant denies that the thing patented by said Smith patent No. 1,379,224 has ever been made, used or sold by said Owen P. Smith or by plaintiff and denies

that said Owen P. Smith or this plaintiff has marked any device or devices made under and in accordance with the thing patented by said Smith patent No. 1,379,224 with the word "patented", together with the day and year the said alleged letters patent No. 1,379,224 were granted, as alleged in the bill of complaint herein and as required by Sec. 4900, R. S. U. S.

As to all of these allegations in the bill of complaint defendant denies the same and requires strict proof thereof on the part of plaintiff.

Moreover, this defendant denies that it was ever duly notified of the alleged infringement of said Smith patent No. 1,379,224, or that this defendant continued, after such notice, to make, use or vend the thing patented by said Smith No. 1,379,224.

(5) Answering Clause "5" of the bill of complaint, which purports to relate to alleged U. S. Letters patent No. 1,410,842, dated March 28, 1922, to Owen P. Smith, for Dog Racing Amusement, defendant denies that plaintiff herein is the owner of said patent or any right, title and interest therein; denies that said letters patent were duly and properly granted; denies that Owen P. Smith was the true, original and sole inventor of the alleged and pretended invention the subject-matter of said letters patent; denies that the thing patented by said letters patent discloses an invention patentable under the law; denies that said Owen P. Smith duly or properly applied for said letters patent; denies that the alleged invention the subject-matter of said letters patent was not known or used in this country before the alleged and pretended invention thereof by said Owen P. Smith; denies that the thing patented and described in said letters patent had not been patented and described in prior patents or printed publications before the alleged and pretended invention thereof by the said Smith or more than two years before said Smith applied for said letters patent; denies that the said alleged invention the subject-matter of said letters patent was not in public use and on sale in this country for more than two years before Smith applied for said letters patent; denies that the same, if ever invented by said Smith, had not been abandoned by him before applying for said letters patent.

As to each and all of these allegations in Clause 5 of the bill of complaint herein respecting said Smith patent No. 1,410,842, dated March 28, 1922, this defendant denies the same and requires strict proof thereof and of the said letters patent themselves on the part of plaintiff.

Further answering Clause 5 of the bill of complaint

Separate Answer of Springdale Amusement Park, Ltd.

herein, this defendant denies that the thing patented by said Smith patent No. 1,410,842 has ever been made, used or sold by said Owen P. Smith or by plaintiff and denies that said Owen P. Smith or this plaintiff has marked any device or devices made under and in accordance with the thing patented by said Smith patent No. 1,410,842 with the word "patented", together with the day and year the said alleged letters patent No. 1,410,842 were granted, as alleged in the bill of complaint herein and as required by Sec. 4900 R. S. U. S.

As to all of these allegations in the bill of complaint defendant denies the same and requires strict proof thereof on the part of plaintiff.

Moreover, this defendant denies that it was ever duly notified of the alleged infringement of said Smith patent No. 1,410,842, or that this defendant continued, after such notice, to make, use or vend the thing patented by said Smith patent No. 1,410,842.

(6) Answering Clause "6" of the bill of complaint herein, which purports to relate to alleged U. S. letters patent No. 1,507,439, dated Sept. 2, 1924, to Owen P. Smith for Starting Cage for Racing Dogs, defendant denies that plaintiff herein is the owner of said patent or any right, title and interest therein; denies that said letters patent were duly and properly granted; denies that Owen P. Smith was the true original and sole inventor of the alleged and pretended invention the subject-matter of said letters patent; denies that the thing patented by said letters patent discloses an invention patentable under the law; denies that said Owen P. Smith duly or properly applied for said letters patent; denies that the alleged invention the subject-matter of said letters patent was not known or used in this country before the alleged and pretended invention thereof by said Owen P. Smith; denies that the thing patented and described in said letters patent had not been patented and described in prior patents or printed publications before the alleged and pretended invention thereof by the said Smith or more than two years before said Smith applied for said letters patent; denies that the said alleged invention the subject-matter of said letters patent was not in public use and on sale in this county for more than two years before Smith applied for said letters patent; denies that the same, if ever invented by said Smith, had not been abandoned by him before applying for said letters patent.

As to each and all of these allegations in Clause 6 of the bill of complaint herein respecting said Smith patent No. 1,507,439, dated Sept. 2, 1924, this defendant denies

the same and requires strict proof thereof and of said letters patent themselves on the part of the plaintiff.

Further answering Clause 6 of the bill of complaint herein, this defendant denies that the thing patented by said Smith patent No. 1,507,439 has ever been made, used or sold by said Owen P. Smith or by plaintiff and denies that said Owen P. Smith or this plaintiff has marked any device or devices made under and in accordance with the thing patented by said Smith patent No. 1,507,439 with the word "patented", together with the day and year the said alleged letters patent No. 1,507,439 were granted, as alleged in the bill of complaint herein and as required by Sec. 4900 R. S. U. S.

As to all of these allegations in the bill of complaint defendant denies the same and requires strict proof thereof on the part of plaintiff.

Moreover, this defendant denies that it was ever duly notified of the alleged infringement of said Smith patent No. 1,507,439, or that this defendant continued, after such notice, to make, use or vend the thing patented by said Smith patent No. 1,507,439.

(7) Answering Clause "7" of the bill of complaint herein, which purports to relate to alleged U. S. letters patent No. 1,507,440, dated Sept. 2, 1924, to Owen P. Smith for Housing, for Conveyor Cars and Tracks, defendant denies that plaintiff herein is the owner of said patent or any right title and interest therein; denies that said letters patent were duly and properly granted; denies that Owen P. Smith was the true, original and sole inventor of the alleged and pretended invention the subject-matter of said letters patent; denies that the thing patented by said letters patent discloses an invention patentable under the law; denies that said Owen P. Smith duly or properly applied for said letters patent; denies that the alleged invention the subject-matter of said letters patent was not known or used in this country before the alleged and pretended invention thereof by said Owen P. Smith; denies that the thing patented and described in said letters patent had not been patented and described in prior patents or printed publications before the alleged and pretended invention thereof by the said Smith or more than two years before said Smith applied for said letters patent; denies that the said alleged invention the subject-matter of said letters patent was not in public use and on sale in his country for more than two years before Smith applied for said letters patent; denies that the same, if ever invented by said Smith, had not

been abandoned by him before applying for said letters patent.

As to each and all of these allegations in Clause 7 of the bill of complaint herein respecting said Smith patent No. 1,507,440, dated Sept. 2, 1924, this defendant denies the same and requires strict proof thereof and of the said letters patent themselves on the part of plaintiff.

Further answering Clause 7 of the bill of complaint herein, this defendant denies that the thing patented by said Smith patent No. 1,507,440 has ever been made, used or sold by said Owen P. Smith or by plaintiff and denies that said Owen P. Smith or this plaintiff has marked any device or devices made under and in accordance with the thing patented by said Smith patent No. 1,507,440 with the word "patented", together with the day and year the said alleged letters patent No. 1,507,440 were granted, as alleged in the bill of complaint herein and as required by Sec. 4900 R. S. U. S.

As to all of these allegations in the bill of complaint defendant denies the same and requires strict proof thereof on the part of plaintiff.

Moreover, this defendant denies that it was ever duly notified of the alleged infringement of said Smith patent No. 1,507,440, or that this defendant continued, after such notice, to make, use or vend the thing patented by said Smith patent No. 1,507,440.

(8) Answering Clause "8" of the bill of complaint herein, which purports to relate to alleged U. S. letters patent No. 1,591,569, dated July 6, 1926, to Owen P. Smith, for Electric Car, defendant denies that plaintiff herein is the owner of said patent or any right, title and interest therein; denies that said letters patent were duly and properly granted; denies that Owen P. Smith was the true, original and sole inventor of the alleged and pretended invention the subject-matter of said letters patent; denies that the thing patented by said letters patent discloses an invention patentable under the law; denies that said Owen P. Smith duly or properly applied for said letters patent; denies that the alleged invention the subject-matter of said letters patent was not known or used in his country before the alleged and pretended invention thereof by said Owen P. Smith; denies that the thing patented and described in said letters patent had not been patented and described in prior patents or printed publications before the alleged and pretended invention thereof by the said Smith or more than two years before said Smith applied for said letters patent; denies that the said alleged invention the subject matter of said

letters patent was not in public use and on sale in this country for more than two years before Smith applied for said letters patent; denies that the same, if ever invented by said Smith, had not been abandoned by him before applying for said letters patent.

As to each and all of these allegations in Clause 8 of the bill of complaint herein respecting said Smith patent No. 1,591,569, dated July 6, 1926, this defendant denies the same and requires strict proof thereof and of the said letters patent themselves on the part of plaintiff.

Further answering Clause 8 of the bill of complaint herein, this defendant denies that the thing patented by said Smith patent No. 1,591,569 has ever been made, used or sold by said Owen P. Smith or by plaintiff and denies that said Owen P. Smith or this plaintiff has marked any device or devices made under and in accordance with the thing patented by said Smith patent No. 1,591,569, with the word "patented", together with the day and year the said alleged letters patent No. 1,591,569, were granted, as alleged in the bill of complaint herein and as required by Sec. 4900 R. S. U. S.

As to all of these allegations in the bill of complaint defendant denies the same and requires strict proof thereof on the part of plaintiff.

Moreover, this defendant denies that it was ever duly notified of the alleged infringement of said Smith patent No. 1,591,569, or that this defendant continued, after such notice, to make, use or vend the thing patented by said Smith patent No. 1,591,569.

(9) Answering Clause "9" of the bill of complaint herein, which purports to relate to alleged U. S. letters patent No. 1,630,811, dated May 31, 1927, to Owen P. Smith, for Starting Cage for Dog Racing, defendant denies that plaintiff herein is the owner of said patent or any right title and interest therein; denies that said letters patent were duly and properly granted; denies that Owen P. Smith was the true, original and sole inventor of the alleged and pretended invention the subject-matter of said letters patent; denies that the thing patented by said letters patent discloses an invention patentable under the law; denies that said Owen P. Smith duly or properly applied for said letters patent; denies that the alleged invention the subject-matter of said letters patent was not known or used in this country before the alleged and pretended invention thereof by said Owen P. Smith; denies that the thing patented and described in said letters patent had not been patented and described in prior patents or printed publications before the al-

leged and pretended invention thereof by the said Smith or more than two years before said Smith applied for said letters patent; denies that the said alleged invention the subject-matter of said letters patent was not in public use and on sale in this country for more than two years before Smith applied for said letters patent; denies that the same, if ever invented by said Smith, had not been abandoned by him before applying for said letters patent.

As to each and all of these allegations in Clause 9 of the bill of complaint herein respecting said Smith patent No. 1,630,811, dated May 31, 1927, this defendant denies the same and requires strict proof thereof and of the said letters patent themselves on the part of plaintiff.

Further answering Clause 9 of the bill of complaint herein, this defendant denies that the thing patented by said Smith patent No. 1,630,811 has ever been made, used or sold by said Owen P. Smith or by plaintiff and denies that said Owen P. Smith or this plaintiff has marked any device or devices made under and in accordance with the thing patented by said Smith patent No. 1,630,811, with the word "patented", together with the day and year the said alleged letters patent No. 1,630,811 were granted, as alleged in the bill of complaint herein and as required by Sec. 4900 R. S. U. S..

As to all of these allegations in the bill of complaint defendant denies the same and requires strict proof thereof on the part of plaintiff.

Moreover, this defendant denies that it was ever duly notified of the alleged infringement of said Smith patent No. 1,630,811, or that this defendant continued, after such notice, to make, use or vend the thing patented by said Smith patent No. 1,630,811.

(10) Answering Clause "10" of the bill of complaint herein, which purports to relate to alleged U. S. letters patent No. 1,630,812, dated May 31, 1927, to Owen P. Smith for Traction Car and the like, defendant denies that plaintiff herein is the owner of said patent or any right, title and interest therein; denies that said letters patent were duly and properly granted; denies that Owen P. Smith was the true, original and sole inventor of the alleged and pretended invention the subject-matter of said letters patent; denies that the thing patented by said letters patent discloses an invention patentable under the law; denies that said Owen P. Smith duly or properly applied for said letters patent; denies that the alleged invention the subject-matter of said letters patent was not known or used in this country before the alleged and pretended invention thereof by said Owen P. Smith;

denies that the thing patented and described in said letters patent had not been patented and described in prior patents or printed publications before the alleged and pretended invention thereof by the said Smith or more than two years before said Smith applied for said letters patent; denies that the said alleged invention the subject-matter of said letters patent was not in public use and on sale in this country for more than two years before Smith applied for said letters patent; denies that the same, if ever invented by said Smith, had not been abandoned by him before applying for said letters patent.

As to each and all of these allegations in Clause 10 of the bill of complaint herein respecting said Smith patent No. 1,630,812, dated May 31, 1927, this defendant denies the same and requires strict proof thereof and of the said letters patent themselves on the part of plaintiff.

Further answering Clause 10 of the bill of complaint herein, this defendant denies that the thing patented by said Smith patent No. 1,630,812 has ever been made, used or sold by said Owen P. Smith or by plaintiff and denies that said Owen P. Smith or this plaintiff has marked any device or devices made under and in accordance with the thing patented by said Smith patent No. 1,630,812 with the word "patented", together with the day and year the said alleged letters patent No. 1,630,812 were granted, as alleged in the bill of complaint herein and as required by Sec. 4900 R. S. U. S.

As to all of these allegations in the bill of complaint defendant denies the same and requires strict proof thereof on the part of plaintiff.

(11) Answering Clause "11" of the bill of complaint herein, defendant denies that all or any of the said Smith alleged letters patent declared upon in the bill and hereinbefore referred to in this answer are or is for an "invention" patentable under the law and denies that said letters patent referred to in the bill of complaint are or is "respectfully" (sic in the bill) respectively capable of conjoint use as well as separate use, and denies that any of said alleged and pretended inventions have been used, either conjointly or separately, by plaintiff or by said Owen P. Smith in various parts, or in any part, of the United States, or that said alleged and pretended inventions, or any of them, either have been or are being used by this defendant, Springdale Amusement Park, Limited, or by all or any of the other individual defendants named in the bill; and defendant denies that it, or any of the individual defendants named in the bill, co-operated with, aided or abetted each other or anyone in using or in

making or selling, within six years last past or any time, any alleged or pretended invention, or any invention whatsoever, claimed in and patented by all or anyone of the said Smith letters patent declared upon in the bill.

As to all of these allegations in Clause "11" of the bill, this defendant denies the same, puts the plaintiff to strict proof in regard thereto, and defendant states most positively that it is not true that it has ever at any time or place since the date or dates of the grant or grants of any of the said Smith letters patent declared upon in the bill made, used or sold any device patented by (i. e. claimed in) all or any of the said Smith letters patent declared upon in the bill of complaint.

As to any such allegations in Clause "11" of the bill or elsewhere in the bill of complaint herein, defendant denies the same, states that any such allegation or allegations is or are untrue and puts the plaintiff herein to strict proof in regard thereto.

Answering Clause "12" of the bill, this defendant admits that, at the time the bill of complaint was sworn to by plaintiff (August 12, 1927) and when (a few days after August 12, 1927) (and before August 25, 1927) the bill of complaint in this case was filed, this defendant, **but with the common, lawful right so to do**, was engaged in the business of conducting a certain amusement enterprise near the City of Hamilton, County of Butler, State of Ohio, in connection with which amusement enterprise greyhounds race over a course in pursuit of a lure, which lure is caused to travel over said course in advance of the greyhounds (an amusement in respect to which plaintiff, by virtue of all or of any of the Smith patents in suit, has no broad monopoly, as shown by numerous patents and publications, all prior in date to any of the Smith patents in suit and prior in date to the date of the alleged and pretended invention of all, or of any, of said Smith patents in suit, which prior patents and publications are pleaded **infra** in this answer). But defendant denies the charge made in Clause "12" of the bill and states that it is not true that in making or using, or in causing to be made or used, the amusement device actually used by this defendant at its dog-racing park aforesaid the defendant has used any invention patented by (i. e. claimed in and by) all, or any, of the eight Smith letters patent declared upon in the bill herein, as plaintiff and her counsel well knew, or had full opportunity of knowing, when the bill in this case was sworn to by plaintiff, as well as when the bill in this case was filed in the

office of the Clerk of this Court at Cincinnati, Ohio. For defendant's said amusement park, where it was conducting its said "**amusement enterprise**" was then (when the bill was sworn to, as well as when the bill was filed) located, as the bill alleges, "**near the City of Hamilton, County of Butler, and State of Ohio**", which is, as this Court will notice judicially within ready access of the City of Cincinnati, Ohio, by trolley or automobile; the dog races were being conducted there every day during the month of August; access to this place of public amusement (as the bill alleges, in clause "12" thereof) was to be had merely on paying an admission fee; and, therefore, all the devices there used by this defendant in carrying on its dog races were open to inspection; it would have appeared to plaintiff, or to plaintiff's counsel, on inspection of the devices then and there in use by defendant, **that no device being used by defendant, at its said dog race course**, embodied in its construction anything patented (i. e. claimed) by any claim of any of the several (eight in all) Smith patents declared upon in the bill herein.

This defendant, therefore, not only denies each and every allegation in Clause "12" of said bill (except as specifically admitted **supra**) and requires strict proof thereof by plaintiff, and also denies that this defendant has infringed or is infringing all, or any, of the Smith patents declared upon in the bill, or that defendant threatens to infringe all, or any, of said letters patent; but defendant also charges the fact to be that this suit was brought by plaintiff maliciously, without probable cause, plaintiff knowing at the time the bill in this case was filed, or then having full opportunity to know, that this defendant had not then infringed and was not then infringing all, or any, of the Smith letters patent declared upon in the bill in this case.

Further answering Clause "12" of the bill, this defendant denies that it has damaged the plaintiff, in respect to any alleged, lawful rights of plaintiff under all, or under any, of the Smith letters patent in suit; and defendant denies that it has made any profits for which, under the law, it is, in any way, accountable to plaintiff; and this defendant specifically denies that plaintiff has suffered any damage, or that defendant has made any profit, growing out of the matters charged in Clause "12" of the bill. As to all such allegations in the bill, this defendant requires strict proof on the part of plaintiff.

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(13) In respect to Clause "13" of the bill, this defendant denies it is true that Owen P. Smith, or the plaintiff, from the month of February, 1921, or at any time, made, used or sold the alleged invention or alleged inventions covered by, or the subject-matter of, all or any of the several (eight in number) Smith letters patent declared upon in the bill. As to all such allegations of the bill, defendant denies the same and requires strict proof (in respect to each of the Smith patents in suit), especially so in view of the fact that defendant is informed and believes, and on that information charges the fact to be, that as to several, if not all, of the Smith patents in suit, no commercial device coming within the scope of any claim of any of said Smith letters patent in suit has ever been made, sold or used.

As to the following allegations in Clause "13" of the bill, this defendant denies each and every one of the same and states that, if true, they are utterly immaterial; and, in any event, defendant requires strict proof thereof by plaintiff, said allegations being as follows:

> "and that prior to the Autumn of the year 1925, no person other than the said Owen P. Smith, or his representatives and licensees, had assumed to make or sell the inventions or devices embodying said inventions, or any of them. That for several years, and prior to the Autumn of the year 1925, all persons, other than the said Owen P. Smith, and his authorized agents or licensees, refrained from using or selling the invention or inventions covered by said several letters patent, for the reason of the existence of said several letters patent, and of the application for letters patent which have since the year 1925 matured into letters patent, although it would have been to the interest of third persons to adopt and employ such inventions. That during the period from the grant of said letters patent and each of them there has been a general public acquiescence in their novelty and validity; and that the said Owen P. Smith and his associates, agents or licensees have spent great sums of money in carrying on the inventions covered by said letters patent, and introducing the said inventions into gainful use, and that said use by said Owen P. Smith has been exclusive, and without question on the part of the public, from the year 1921 until the Fall of 1925."

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(14) As to Clause "14" of the bill, this defendant states that each and all of the allegations contained in said clause of the bill, if they were true, are utterly immaterial here; that each and all of said allegations are untrue and defendant denies the same and requires strict proof thereof by plaintiff.

Specifically, this defendant denies: that the G. W. Heintz there referred to was, at any time, engaged with, or in association with, Owen P. Smith; or that, at any time, said G. W. Heintz actively participated in the exploitation of the alleged inventions the subjects-matter of the several (eight in all) Smith letters patent in suit, or the subject-matter of any of said Smith letters patent or that said Heintz assisted or was instrumental in bringing the alleged and pretended utility and value of said alleged and pretended inventions of Owen P. Smith to public attention etc., etc., as falsely alleged in the bill; or that after leaving the alleged employment of, or association with, said Smith, said Heintz entered into a wrongful and unlawful conspiracy with this defendant and the other individual defendants named in the bill, or with others, to commit or cause to be committed, the unlawful making, using, selling or leasing of apparatus embodying all, or any, of the alleged inventions of the several (there are eight named in the bill) letters patent to Owen P. Smith; or that, in pursuance of said falsely alleged conspiracy, said Heintz or others instigated and initiated the making, using or selling of any apparatus in infringement of all, or of any, of said Smith patents in suit; or that in furtherance of said falsely alleged conspiracy, said Heintz and others caused this defendant to be formed, to carry on the making, using or selling, or leasing, of any apparatus, in infringement of all, or of any of said Smith letters patent in suit etc., etc., as falsely alleged in Clause "14" of the bill.

As to each and all of said allegations in Clause "14" of the bill, this defendant denies the same, states that they are untrue and also irrelevant and immaterial and requires strict proof thereof by plaintiff.

(15) As to Clause "15" of the bill, relating to an alleged suit under certain letters patent to Owen P. Smith and others in the United States District Court for the Southern District of Louisiana, that a preliminary injunction was granted in that case and that on July 22, 1927, the District Court in that case "**ordered a decree for the plaintiff, Hannah M. Smith, administratrix**" etc., etc., this defendant denies each and all of said allegations and requires strict proof thereof by plaintiff. And,

moreover, defendant states, as to each and all of said allegations, that they are irrelevant or immaterial here, particularly as regards this defendant, or as against any individual named as defendant in the case at bar who was not a party or a privy in that suit at New Orleans, or as against any individual defendant named in the bill in this case not served with process in the instant case, or not within the jurisdiction of this Court, in the instant case, for all or any of the following reasons:

(2) As to this defendant which is now answering the bill in the case at bar (Springdale Amusement Park, Limited), it is not alleged in the instant bill that this defendant was a party defendant or in privity with any party defendant in that suit at New Orleans (in the District Court of the United States for the Southern District of Louisiana, alleged to have been tried before the Honorable Louis Burns, District Judge), and, as a matter of fact, as this defendant states, it was not a party to that suit.

(b) It does not appear from the allegations of the bill that any **final** decree, but merely an **interlocutory** decree, has as yet been entered in that case; and only a **final** decree in a patent case can operate as an estoppel against the parties in such a suit. An **interlocutory** decree finding certain letters patent valid and infringed and ordering an injunction and accounting as to certain specific letters patent can never operate as an estoppel, even as against the actual parties to the suit in which such **interlocutory** decree is entered.

(c) This defendant, Springdale Amusement Park, Limited, is not charged in the instant bill with being, and is not in point of fact, either a party, or in privity with any party, in said New Orleans suit.

(d) This instant suit is based on the eight Smith patents named in the bill, while the said suit referred to in said Clause "15" of the bill (the New Orleans case, as we call it for the sake of brevity) was, as this defendant is informed and believes and charges the fact to be and as also would seem to appear from Clause "15" of the bill in the instant case, on six letters patent to Owen P. Smith, being six of the same Smith patents sued upon here (Smith patents Nos. 1,507,439; 1,507,440; 1,038,504; 1,379,224; 1,410,842 and 1,591,569); but that two of the Smith patents declared upon in the bill in the instant suit (Smith patent No. 1,630,811 and Smith patent No. 1,630,812) were not sued upon in said New Orleans suit. That, at the trial of the said New Orleans case, as this defendant is informed and believes and therefore charges

the fact to be plaintiff in open Court, by its counsel abandoned her case as to three of said Smith patents, plaintiff admitting then and there, by her counsel, that said three patents (being said Smith patents Nos. 1,038,504; 1,410,842 and 1,591,569) had not been infringed.

The said **interlocutory** decree in said New Orleans case, if produced in evidence, will show that the only patents sustained and found infringed in that case are the Smith patents Nos. 1,507,439, 1,507,440 and 1,379,224, as to certain claims of said three Smith patents; that no other patent was sustained or found infringed by that **interlocutory** decree; that as to three of the said Smith patents (Nos. 1,038,504; 1,410,842 and 1,591,569), for reasons stated above, plaintiff abandoned its said suit at New Orleans; and that as to two Smith patents before the Court in the instant case (Nos. 1,630,811 and 1,630,812), neither of said last named patents was even sued upon in said New Orleans case.

Defendant further states, as to said New Orleans case and the allegations relating thereto in Clause "15" of the bill, that no decree or opinion in said case can be of any force as against this defendant in this instant case, not only for the reasons hereinbefore stated, but also for the following reason: that neither the decree nor the opinion of the District Court in that New Orleans case can be of even persuasive force as a precedent in the case at bar, because both the opinion and decree of the District Court in that case are manifestly and demonstrably (when the facts in that case are understood) erroneous and unsound in law.

And defendant further states and charges the fact to be, on information and belief, that the defendants in the New Orleans case have promptly appealed, from said erroneous, **interlocutory** decree in said New Orleans case, to the United States Circuit Court of Appeals for the Fifth Circuit, and, as defendant is informed and believes and charges the fact to be, the said appeal in said case having been taken under the provisions of Sec. 129 of the Federal Judicial Code, said appeal should and will be speedily heard in said U. S. Court of Appeals for the Fifth Circuit.

(16) This defendant states that it has never made, used or sold, was not making, using or selling at the time of the filing of the bill of complaint herein, that it is not now making, using or selling, and that it does not intend to make, use or sell, any device, machine or apparatus embodying in its construction any device, structure or combination of elements claimed by any

claim of any one of any of the eight Smith patents declared upon in the bill of complaint in this case, and that no claim of anyone of said eight Smith letters patent, when construed in the light of the history of the application for the patent and of the prior state of the art, can be construed as including within its scope any device, machine or apparatus made, used or sold by this defendant.

(17) This defendant states that each and every one of the eight Smith patents in suit is destitute of patentable novelty and invention in view of what is disclosed by certain prior patents and prior printed publications granted or published before the date of the alleged invention or inventions of said Owen P. Smith, or more than two years before said Smith applied for his letters patent (each patent hereinafter named in this answer being pleaded both as a prior patent and a prior printed publication).

For the purpose of illustrating the prior state of the art, to properly construe each and all of the eight Smith patents in suit and to limit the interpretation of the claims of each and all of said patents, and also for the purpose of showing want of patentable novelty and invention in respect to the things claimed by each and all of said eight Smith patents declared upon in the bill in this case, defendant cites, as to each of said Smith patents tabulated below, the following prior letters patent.

(18) As to Smith patent No. 1,038,504, dated Sept. 10, 1912, applied for Feb. 26, 1912, to show the state of the art as the same existed before said Owen P. Smith applied for said patent, or more than two years before said Smith applied for said patent, for the purpose of assisting the Court in interpreting the claims of said Smith patent in the light of the prior art and also for the purpose of showing want of patentable novelty and invention in the thing claimed by any claim of this Smith patent relied upon by plaintiff in this case, defendant pleads (both as prior letters patent and prior printed publications) the following things:

U. S. Letters patent to Michael Walsh, No. 611,876, dated Oct. 4, 1898.

U. S. letters patent to Benjamin Beerwald, No. 717,798, dated Jan. 6, 1903.

U. S. letters patent to Gerardo Majno, No. 737,257, dated Aug. 25, 1903.

U. S. letters patent to James W. Daniels, No. 583,109, dated May 25, 1897.

U. S. letters patent to Thomas F. Gaynor, No. 811,284, dated Jan. 30, 1906.

U. S. letters patent to A. G. Maccoloch, No. 918,343, dated April 13, 1909.

U. S. letters patent to T. W. Potts, No. 916,590, dated March 30, 1909.

U. S. letters patent to H. O. Neebe, No. 886,627, dated May 5, 1908.

U. S. letters patent to Ernest T. Sulzer, M. Garanger & V. J. Dey, No. 874,135, dated Dec. 17, 1907.

U. S. letters patent to L. E. Walkins, No. 610,008, dated Aug. 30, 1898.

U. S. letters patent to D. C. B. Griffith, No. 530,767, dated Dec. 11, 1894.

U. S. letters patent to A. Palmer, No. 475,742, dated May 24, 1892.

U. S. letters patent to W. S. Harrington, No. 456,818, dated July 28, 1891.

U. S. letters patent to J. Holland, No. 451,691, dated May 5, 1891.

U. S. letters patent to H. J. F. Schultz, No. 274,228, dated March 20, 1883.

(19) This defendant further states, by way of defense, that the thing patented by said Smith patent No. 1,038,504, or material or substantial parts of the same, was or were patented or described, prior to said Owen P. Smith's supposed invention or discovery thereof, or more than two years prior to said Smith's application for his said patent, in the patents and printed publications listed in the last preceding clause of this answer, each and all of said prior patents being here pleaded not only as a prior patent but also as a prior printed publication within the meaning of Sections 4886 and 4920 of the Revised Statutes of the United States.

(20) **As to Smith patent No. 1,379,224**, for Dog Racing Amusement, dated May 24, 1921, applied for September 4, 1919, to show the state of the art as the same existed before said Owen P. Smith applied for said patent or more than two years before said Smith applied for said patent, for the purpose of assisting the Court in interpreting the claims of said Smith patent in the light of the prior art and also for the purpose of showing want of patentable novelty and invention in the thing claimed by any claim of this Smith patent relied upon by plaintiff in this case, defendant pleads (both as prior letters patent and prior printed publications) the following things:

U. S. Patent to J. A. Pinard, No. 362,396, dated May 3, 1887.

U. S. Patent to Michael Walsh, No. 611,876, dated Oct. 4, 1898.

British patent to Ellis Moss, No. 9058, of Apr. 29, 1896.

U. S. Patent to A. G. Maccoloch, No. 918,343, dated April 13, 1909.

U. S. Patent to T. W. Potts, No. 916,590, dated March 30, 1909.

U. S. Patent to H. O. Neebe, No. 886,627, dated May 5, 1908.

U. S. Patent to Ernest T. Sulzer, M. Garanger and V. J. Dey, No. 874,135, dated Dec. 17, 1907.

U. S. Patent to L. E. Walkins, No. 610,008, dated Aug. 30, 1898.

U. S. Patent to D. C. B. Griffith, No. 530,767, dated Dec. 11, 1894.

U. S. Patent to A. Palmer No. 475,742, dated May 24, 1892.

U. S. Patent to W. S. Herrington, No. 456,818, dated July 28, 1891.

U. S. Patent to J. Holland, No. 451,691, dated May 5, 1891.

U. S. Patent to H. W. Libbey, No. 441,571, dated Nov. 25, 1890.

U. S. Patent to H. J. F. Schultz, No. 274,228, dated March 20, 1883.

(21) This defendant further states, by way of defense, that the thing patented by said Smith patent No. 1,379,224, or material or substantial parts of the same, was or were patented or described, prior to said Owen P. Smith's supposed invention or discovery thereof, or more than two years prior to said Smith's application for his said patent, in the patents and printed publications listed in the last preceding clause of this answer, each and all of said prior patents being here pleaded not only as a prior patent but also as a prior printed publication within the meaning of Sections 4886 and 4920 of the Revised Statutes of the United States.

(22) **As to Smith patent No. 1,410,842**, for Dog Racing Amusement, dated March 28, 1922, applied for August 28, 1920, to show the state of the art as the same existed before said Owen P. Smith applied for said patent, or more than two years before said Smith applied for said patent, for the purpose of assisting the Court in interpreting the claims of said Smith patent in the light of the prior art and also for the purpose of showing want of patentable novelty and invention in the thing claimed

by any claim of this Smith patent relied upon by plaintiff in this case, defendant pleads (both as prior letters patent and prior printed publications) the following things:

U. S. patent to Michael Walsh, No. 611,876, dated Oct. 4, 1898.

U. S. patent to Percy Everett, No. 1,052,807, dated Feb. 11, 1913.

British patent to Ellis Moss, No. 9,058 of Apr. 29, 1896.

U. S. patent to A. G. Maccoloch, No. 918,343, dated April 13, 1909.

U. S. patent to T. W. Potts No. 916,590, dated March 30, 1909.

U. S. patent to H. O. Neebe, No. 886,627, dated May 5, 1908.

U. S. patent to Ernest T. Sulzer, M. Garanger and V. J. Dey, No. 874,135, dated Dec. 17, 1907.

U. S. patent to L. E. Walkins, No. 610,008, dated Aug. 30, 1898.

U. S. patent to D. C. B. Griffith, No. 530,767, dated Dec. 11, 1894.

U. S. patent to A. Palmer, No. 475,742, dated May 24, 1892.

U. S. patent to W. S. Herrington, No. 456,818, dated July 28, 1891.

U. S. Patent to J. Holland, No. 451,691, dated May 5, 1891.

U. S. Patent to H. W. Libbey, No. 441,571, dated Nov. 25, 1890.

U. S. patent to H. J. F. Schultz, No. 274,228, dated March 20, 1883.

(23) This defendant further states by way of defense, that the thing patented by said Smith patent No. 1,410,842, or material or substantial parts of the same, was or were patented or described, prior to said Owen P. Smith's supposed invention or discovery thereof, or more than two years prior to said Smiths' application for his said patent, in the patents and printed publications listed in the last preceding clause of this answer, each and all of said prior patents being here pleaded not only as a prior patent but also as a prior printed publication within the meaning of Sections 4886 and 4920 of the Revised Statutes of the United States.

(24) **As to Smith patent No. 1,507,439**, for Starting Cage for Racing Dogs, dated Sept. 2, 1924, applied for May 16, 1921, to show the state of the art as the same existed before said Owen P. Smith applied for said patent, or more than two years before said Smith applied, for said patent, for the purpose of assisting the

Court in interpreting the claims of said Smith patent in the light of the prior art and also for the purpose of showing want of patentable novelty and invention in the thing claimed by any claim of this Smith patent relied upon by plaintiff in this case, defendant pleads (both as prior letters patent and prior printed publications) the following things:

U. S. Patent to S. B. Whitehead, No. 529, 897, dated Nov. 27, 1894;

U. S. Patent to J. T. Andrew, No. 543,762, dated July 30, 1895;

U. S. Patent to D. Stitzer, No. 868,029, dated Oct. 15, 1907;

U. S. Patent to Stedeker, No. 647,166, dated April 10, 1900;

U. S. Patent to A. J. Escude, No. 731, 347, dated June 16, 1903.

(25) This defendant further states, by way of defense, that the thing patented by said Smith patent No. 1,507,439, or material or substantial parts of the same, was or were patented or described prior to said Owen P. Smiths' supposed invention or discovery thereof, or more said patent, in the patents and printed publications listed in the last preceding clause of this answer, each and all of said prior patents being here pleaded not only as a prior patent but also as a prior printed publication within the meaning of Sections 4886 and 4920 of the Revised Statutes of the United States.

(26) **As to Smith patent No. 1,507,440**, for Housing for Conveyor Cars, dated Sept. 2, 1924, applied for May 24, 1921, to show the state of the art as the same existed before said Owen P. Smith applied for said patent, or more than two years before said Smith applied for said patent, for the purpose of assisting the Court in interpreting the claims of said Smith patent in the light of prior art and also for the purpose of showing want of patentable novelty and invention in the thing claimed by any claim of this Smith patent relied upon by plaintiff in this case, defendant pleads (both as prior letters patent and prior printed publications) the following things.

U. S. Patent to G. Bertram, No. 729, 120, dated May 26, 1903;

U. S. Patent to H. F. Duffy, No. 748, 591, dated Jan. 5, 1904;

U. S. Patent to J. S. Alexander, No. 855, 492, dated June 4, 1907;

U. S. Patent to W. P. Buckley, No. 319, 881, dated June 9, 1885;

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U. S. Patent to G. L. Harvey, No. 414, 976, dated Nov. 12, 1889;

U. S. Patent to A. H. Heintzman, No. 479,327, dated July 19, 1892;

U. S. Patent to Charles Delahunt, No. 573,452, dated Dec. 22, 1896;

U. S. Patent to E. E. Dunbar, No. 618, 851, dated Feb. 7, 1899;

U. S. Patent to J. Hutchinson, No. 898, 220, dated Sept. 8, 1908;

U. S. Patent to J. W. and E. C. Fowkes, No. 1,046,574, dated Dec. 10, 1912.

(27) This defendant further states, by way of defense, that the thing patented by said Smith patent No. 1,507,440, or material or substantial parts of the same, was or were patented or described, prior to said Owen P. Smith's supposed invention or discovery thereof, or more than two years prior to said Owen P. Smiths' supposed invention or discovery thereof, or more than two years prior to said Smiths application for his said patent, in the patents and printed publications listed in the last preceding clause of this answer, each and all of said prior patents being here pleaded not only as a prior patent but also as a prior printed publication within the meaning of Sections 4886 and 4920 of the Revised Statutes of the United States.

(28) **As to Smith patent No. 1,591,569**, for Electric Cars, dated July 6, 1926, applied for October 17, 1922, to show the state of the art as the same existed before said Owen P. Smith applied for said patent, or more than two years before said Smith applied for said patent, for the purpose of assisting the Court in interpreting the claims of said Smith patent in the light of the prior art and also for the purpose of showing want of patentable novelty and invention of the thing claimed by any claim of this Smith patent relied upon by plaintiff in this case, defendant pleads (both as prior letters patent and prior printed publications) the following things.

U. S. Patent to Isaac Towell, No. 219, 039, dated Aug. 26, 1879;

U. S. patent to William C. Creveling, No. 1,481,313, dated Jan. 22, 1924;

U. S. patent to Owen P. Smith, No. 1,379,224, dated May 24, 1921, applied for Sept. 4, 1919 (one of the Smith patents declared upon in this bill);

U. S. Patent to Owen P. Smith, No. 1,410,842, dated Mar. 28, 1922, applied for Aug. 28, 1920, (one of the Smith patents declared upon in this bill);

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U. S. Patent to Owen P. Smith, No. 1,038,504, dated Sept. 10, 1912, applied for Feb. 26, 1912 (one of the Smith patents declared upon in this bill);

U. S. Patent to Wilhelm Fiedler, No. 869,356, dated Oct. 29, 1907;

U. S. Patent to C. A. Lincoln, No. 986,185, dated Mar. 7, 1911;

U. S. patent to E. Peckham, No. 894,342, dated July 28, 1908;

U. S. patent to J. W. Sprague, No. 203, 665, dated May 14, 1878;

U. S. patent to J. McLachlan, No. 261, 371, dated July 18, 1882;

U. S. Patent to Owen P. Smith, No. 1,038,504 dated Sept. 10, 1912;

U. S. patent to Owen P. Smith, No. 1,379,224, dated May 24, 1921.

(29) This defendant further states, by way of defense, that the thing patented by said Smith patent No. 1,591,569, or material or substantial parts of the same, was or were patented or described, prior to said Owen P. Smiths' supposed invention or discovery thereof, or more than two years prior to said Smith's application for his said patent, in the patents and printed publications listed in the last preceding clause of this answer, each and all of said prior patents being here pleaded not only as a prior patent but also as a prior printed publication within the meaning of Sections 4886 and 4920 of the Revised Statutes of the United States.

(30) **As to Smith patent No. 1,630,811**, for Starting Cages for Dog Racing, dated May 31, 1927, applied for Dec. 8, 1925, to show the state of the art as the same existed before said Owen P. Smith applied for said patent, or more than two years before said Smith applied for said patent, for the purpose of assisting the Court in interpreting the claims of said Smith patent in the light of the prior art and also for the purpose of showing want of patentable novelty and invention in the thing claimed by any claim of this Smith patent relied upon by plaintiff in this case, defendant pleads (both as prior letters patent and prior printed publications) the following things:

U. S. patent to Owen P. Smith, No. 1,507,439, dated Sept. 2, 1924, applied for May 16, 1921 (one of the Smith patents declared upon in this bill);

U. S. patent to Andrew, No. 543, 762, dated July 30, 1895;

U. S. patent to Bidwell, No. 821, 454, dated May 22, 1906;

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U. S. patent to J. N. Mansfield, No. 1,480,173, dated Jan. 8, 1924;

U. S. patent to John Parker, No. 823, 544, dated June 19, 1906.

(31) This defendant further states, by way of defense, that the thing patented by said Smith patent No. 1,630,811, or material or substantial parts of the same, was or were patented or described, prior to said Owen P. Smith's supposed invention or discovery thereof, or more than two years prior to said Smiths' application for his said patent, in the patents and printed publications listed in the last preceding clause of this answer, each and all of said prior patents being here pleaded not only as a prior patent, but also as a prior printed publication within the meaning of Sections 4886 and 4920 of the Revised Statutes of the United States.

(32) **As to Smith patent No. 1,630,812**, for Traction Car, dated May 31, 1927, applied for May 24, 1926, to show the state of the art as the same existed before said Owen P. Smith applied for said patent, or more than two years before said Smith applied for said patent, for the purpose of assisting the Court in interpreting the claims of said Smith patent in the light of the prior art and also for the purpose of showing want of patentable novelty and invention in the thing claimed by any claim of this Smith patent relied upon by plaintiff in this case, defendant pleads (both as prior letters patent and prior printed publications) the following things:

U. S. patent to Owen P. Smith, No. 1,379,224, dated May 24, 1921;

U. S. patent to J. S. Fairfax, No. 60,868, dated Jan. 1, 1867;

U. S. patent to J. Q. A. DeHuff, No. 64, 640, dated May 14, 1867;

U S. patent to William Robinson, No. 243, 796, dated July 5, 1881;

U. S. patent to Isaac Towell, No. 245,616, dated Aug. 9, 1881;

U. S. patent to Benjamin F. Allen, No. 532,937, dated Jan. 22, 1895;

U. S. patent to George C. Towle, No. 1,061, 146, dated May 6, 1913;

U. S. patent to Thaddeus J. Barrow, No. 1,412, 383, dated Apr. 11, 1922;

U. S. patent to C. A. Lincoln, No. 986,185, dated March 7, 1911;

U. S. patent to E. Peckham, No. 894,342, dated July 28, 1908;

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U. S. patent to J. W. Sprague, No. 203,665, dated May 14, 1878;

U. S. patent to J. McLachlan, No. 261,371, dated July 18, 1882.

U. S. Patent to Owen P. Smith No. 1,038,504, dated Sept. 10, 1912.

(33) This defendant further states by way of defense, that the thing patented by said Smith patent No. 1,630,812, or material or substantial parts of the same, was or were patented or described, prior to said Owen P. Smith's supposed invention or discovery thereof, or more than two years prior to said Smiths' application for his said patent, in the patents and printed publications listed in the last preceding clause of this answer, each and all of said prior patents being here pleaded not only as a prior patent but also as a prior printed publication within the meaning of Sections 4886 and 4920 of the Revised Statutes of the United States.

(34) Further answering and with respect to said opinion and **interlocutory** decree in said "New Orleans Case" (see Clause 15 of this answer), which said opinion and **interlocutory** decree are utterly irrelevant and immaterial in the case at bar, so far as this defendant is concerned, for reasons stated in said Clause 15 of this answer, this defendant states, on information and belief: that, if the record in said New Orleans case" is produced in evidence here, it will appear therefrom that, at the trial of said 'New Orleans case", the defendants' counsel in said case (erroneously and improvidently, as this defendant is advised and believes), for the purposes of that case, stated to the Court that he did not propose to attack the validity of the Smith patents Nos. 1,379,224, 1,507,439 and 1,507,440 (three Smith patents sustained, by said **interlocutory** decree, as alleged in the bill therein, that "New Orleans Case"), and that the sole defense of defendants in that "New Orleans case", as to said three above-named Smith patents, would be the defense of non-infringement.

However, in the case at bar, this defendant not only denies that said last named three Smith patents, as well as all of the other Smith patents sued upon in this case, have not been and are not being infringed by this defendant; but, in the case at bar; this defendant also challenges and denies the validity of every one and all of the Smith patents sued upon here (see this answer **supra**) and also challenges and denies plaintiff's title to each and all of the Smith patents in suit.

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(35)

PLAINTIFF'S TITLE TO CERTAIN OF THE LETTERS PATENT IN SUIT IS DEFECTIVE. THERE IS A NON-JOINDER OF NECESSARY PARTIES PLAINTIFF TO THE BILL IN THIS CASE.

As separate and distinct defenses to the bill in this case, defendant states: that it fails to appear from the allegations in Clause 1 of the bill that at the time Owen P. Smith died intestate, as alleged in the bill of complaint herein, the said Owen P. Smith died possessed of all, or of any, right, title and interest in and to all, or any, of the several letters patent declared upon in the said bill of complaint, or that at any time after the alleged death of said Owen P. Smith his alleged administratrix; Hannah M. Smith (the plaintiff in this case) became possessed of all, or of any, right, title and interest in and to all, or any, of the several letters patent declared upon in the bill of complaint herein (See Clause 1 of the bill of complaint);

As to Smith patent No. 1,038,504, in Clause 3 of the bill, it is alleged as follows:

> "Plaintiff is the owner of letters patent of the United States No. 1038504, granted to him September 10th, 1912, on Lure Conveyors, and of all the rights, title and interests therein and thereunder" etc.

But the said letters patent No. 1,038,504, as well as other allegations of the bill of complaint, show that said letters patent No. 1,038,504 were not granted to Hannah M. Smith, administratrix, etc., the plaintiff in this case, but were granted to Owen P. Smith and it does not appear from the bill how, at any time, the plaintiff in this case, Hannah M. Smith, administratrix, etc., acquired any alleged rights under said Smith patent No. 1,038,504, since it does not appear from the bill that at the time of the death of said Owen P. Smith he died possessed of all, or of any, right, title and interest in and to said letters patent; nor does it appear from any allegation of the bill that, after the alleged death of said Owen P. Smith, the plaintiff in this case, said Hannah M. Smith, administratrix, etc., acquired all rights, or any right, under said letters patent No. 1,038,504, by assignment or otherwise.

As to Smith patent No. 1,379,224. It is alleged in Clause 4 of the bill as follows:

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"Plaintiff is the owner of letters patent of the United States No. 1,379,224, granted to said Owen P. Smith May 24, 1921, and all the rights, title and interests therein and thereunder."

However, it does not appear from the bill of complaint that when said Owen P. Smith died intestate he died possessed of all, or of any, right, title and interest in and to said letters patent No. 1,379,224, and it does not appear from the bill of complaint how or when the plaintiff in this case (Hannah M. Smith, administratrix) became possessed of all, or of any, right, title and interest in and to said letters patent No. 1,379,224.

As to Smith patent No. 1,410,842, it is alleged in Clause Clause 5 of the bill of complaint as follows:

"Plaintiff is the owner of letters patent of the United States No. 1,410,842, granted to Owen P. Smith March 28, 1922, on Dog Racing Amusements, and all of the rights, title and interests therein and thereunder."

However, it does not appear from the bill of complaint that when said Owen P. Smith died intestate he died possessed of all, or of any, right, title and interest in and to said letters patent No. 1,410,842, and it does not appear from the bill of complaint how or when the plaintiff in this case, (Hannah M. Smith, administratrix) became possessed of all, or of any, right, title and interest in and to said letters, patent No. 1,410,842.

As to Smith patent No. 1,507,439, it is alleged in Clause 6 of the bill of complaint as follows:

"Plaintiff is the owner of letters patent of the United States No. 1,507,439, granted to said Owen P. Smith, September 2, 1924, on Starting Cages for Racing Dogs, and all of the rights, title and interest therein and thereunder."

However, it does not appear from the bill of complaint that when said Owen P. Smith died intestate he died possessed of all, or of any, right, title and interest in and to said letters patent No. 1,507,439, and it does not appear from the bill of complaint how or when the plaintiff in this case (Hannah M. Smith, administratrix,) became possessed of all, or of any, right, title and interest in and to said letters patent No. 1,507,439.

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As to Smith patent No. 1,507,440, it is alleged in Clause 7 of the bill of complaint as follows:

> "Plaintiff is the owner of letters patent of the United States No. 1,507,440, granted to said Owen P. Smith, September 2, 1924, on Housing for Conveyor Cars and Tracks, and all the rights, title and interest therein and thereunder."

However, it does not appear from the bill of complaint that when said Owen P. Smith died intestate he died possessed of all, or of any, right, title and interest in and to said letters patent No. 1,507,440, and it does not appear from the bill of complaint how or when the plaintiff in this case (Hannah M. Smith, administratrix) became possessed of all, or of any, right, title and interest in and to said letters patent No. 1,507,440.

As to Smith patent No. 1,591,569, it is alleged in Clause 8 of the bill of complaint as follows:

> "Plaintiff is the owner of letters patent of the United States No. 1,591,569, granted to the said Owen P. Smith, July 6, 1926, on Electric Cars, and all of the rights, title and interests therein and thereunder."

However, it does not appear from the bill of complaint that when said Owen P. Smith died intestate he died possessed of all, or of any, right, title and interest in and to said letters patent No. 1,591,569, and it does not appear from the bill of complaint how or when the plaintiff in this case (Hannah M. Smith, administratrix) became possessed of all, or of any, right, title and interest in and to said letters patent No. 1,591,569.

As to Smith patent No. 1,630,811, it is alleged in Clause 9 of the bill of complaint as follows:

> "Plaintiff is the owner of letters patent of the United States No. 1,630,811, issued to said Owen P. Smith, on May 31, 1927, entitled "Starting Cage for Dog Racing and the like', and all the rights, title and interest therein and thereunder."

However, it does not appear from the bill of complaint that when said Owen P. Smith died intestate he died possessed of all, or of any, right, title and interest in and to said letters patent No. 1,630,811, and it does not appear from the bill of complaint how or when the plaintiff in

this case (Hannah M. Smith, administratrix) became possessed of all, or of any, right, title and interest in and to said letters patent No. 1,630,811.

As to Smith patent No. 1,630,812, it is alleged in Clause 10 of the bill of complaint as follows:

> "Plaintiff is the owner of letters patent of the United States No. 1,630,812, issued to Owen P. Smith, on May 31, 1927, entitled Traction Car and the Like, and all of the rights, title and interest therein and thereunder."

However, it does not appear from the bill of complaint that when said Owen P. Smith died intestate he died possessed of all, or of any, right, title and interest in and to said letters patent No. 1,630,812, and it does not appear from the bill of complaint how or when the plaintiff in this case(Hannah M. Smith, administratrix,) became possessed of all, or of any, right, title and interest in and to said letters patent No. 1,630,812.

Now, defendant states and charges the fact to be, on information and belief, this information being based upon duly certified copies of instruments in writing of record in the United States Patent Office respecting the title to certain of said Smith letters patent hereinbefore named and declared upon in the bill of complaint herein, that it appears from said records in the Patent Office and is a fact, as defendant is informed and believes, that at the time of the filing of the bill of complaint and now the plaintiff in this case, Hannah M. Smith, administratrix of the estate of Owen P. Smith, deceased, is not, and that said Owen P. Smith was not at the time of his death, possessed of all right, title and interest in and to certain of said Smith patents hereinbefore recited and declared upon in the bill of complaint herein. The facts in regard to the title as to certain of said letters patent, as appears from the records of the United States Patent Office, or from duly certified copies of the same, all of which matters lay peculiarly within the knowledge of the plaintiff, or were accessible to plaintiff at the time of the filing of the bill of complaint herein, being as follows:

In respect of six of the Smith patents declared upon in the bill of complaint herein, namely, Nos. 1,038,504; 1,379,224; 1,410,842; 1,507,439 and 1,507,440 and 1,591,569, and in respect to the alleged inventions, the subjects matter of said last-named six Smith letters patent, defendant states as follows:

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As to said Smith patent No. 1,038,504, dated Sept. 10, 1912, on Dec. 2, 1911, by a certain instrument in writing which was afterwards (on April 5, 1912) recorded in the Patent Office of the United States, Owen P. Smith sold, assigned and transferred for an alleged consideration of $2,000.00, to A. C. Green, Pat C. Foley, Dave A. Weiss, Ned Gill, G. J. Lee, and F. J. Matzinger, all of Houston, Texas, the following right, title and interests in the invention as described in the specification executed by said Smith on December 2, 1911, preparatory to obtaining letters patent therefor, in the States of California, Kentucky, Missouri, and Montana; To said A. C. Green and Pat C. Foley each and undivided 18-¾% interest; to said Ned Gill 9.37-½% interest; to said F. J. Matzinger 9.37-½% interest; to said Dave A. Weiss 18-¾% interest, and to said G. J. Lee a 25% interest in said invention—all as will more fully appear from said instrument in writing or from a duly certified copy thereof.

Defendant further states, on information and belief based on the records in the Patent Office of the United States, that the said alleged invention referred to in said instrument in writing and which is there referred to as described in the specification executed by said Owen P. Smith on December 2nd, 1911, is the alleged invention the subject of said Smith patent No. 1,038,504, dated Sept. 10, 1912, for which said Owen P. Smith executed his application on December 2, 1911.

Defendant further states, on information and belief based on the records in the United States Patent Office, that also on December 2nd, 1911, by an instrument in writing executed by said Owen P. Smith on said last named date, which instrument in writing was recorded in the U. S. Patent Office on April 5, 1912, said Owen P. Smith, for an alleged consideration of five thousand dollars, sold, assigned and transferred to A. C. Green and G. J. Lee of Houston, Texas, equally, all said Owen P. Smiths' right, title and interest in and to the alleged invention the subject-matter of said Smith's application, being the alleged invention described in said application executed by said Smith on December 2, 1911, and being the alleged invention for which said U. S. letters patent No. 1,038,504, were granted, for the States of Arkansas, New York, Tennessee, Georgia and Ohio.

Defendant further states that afterwards, to-wit, on Dec. 4, 1911, by an instrument in writing bearing date the 4th day of December, 1911, and recorded in the U. S. Patent Office on May 14, 1927, being in the form of a contract between said Owen P. Smith and A. C. Green of

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Houston, Texas, it is stated that said Owen P. Smith is the inventor of the alleged invention the subject-matter of said application which was duly filed in the Patent Office by said Owen P. Smith and which was executed on Dec, 2, 1911, being, as defendant is informed and believes and charges the fact to be, the same alleged invention for which said Owen P. Smith executed an application for letters patent on Dec. 2, 1911 and which resulted in the said Smith patent No. 1,038,504, dated Sept. 10, 1912. Defendant states that, as will appear from said contract or instrument in writing executed by said Owen P. Smith and A. C. Green on the 4th day of December, 1911, or from a duly certified copy thereof, it is recited in said contract or agreement or instrument in writing that said Owen P. Smith is desirous of selling a part interest in letters patent, when secured, on said application in respect of whatever rights said Smith might then (Dec. 4, 1911) have in said application for U. S. letters patent or any letters patent that might be granted thereon; that by said instrument in writing dated the 4th day of December, 1911, said Owen P. Smith undertook to agree and contracted to sell to said A. C. Green, one of the parties to the said contract, an undivided one-half interest in all patent rights that said Owen P. Smith might then be entitled to or might secure to said invention, as well as to all improvements that said Smith might make on said invention, in all the States of the United States excepting New York, Texas, Arizona, Kentucky, Arkansas, Pennsylvania, Georgia, Tennessee, Montana, California, Ohio and Missouri, said instrument in writing stating that in respect to the twelve states last named all right, title and interest in the said invention and in U. S. letters patent that might be granted therefor have been already disposed of; that said contract or assignment from said Owen P. Smith to said A. C. Green further provided that said Owen P. Smith would make a full and legal assignment of said undivided one-half interest in said invention and in U. S. letters patent that might be granted therefor, except as to the twelve states stated above, the rights in respect to which had already been assigned, when said A. C. Green should have fully complied with the terms and conditions of a certain alleged contract between said Smith and A. C. Green alleged to be dated Nov. 16, 1911, etc., all as will more fully appear from the said contract or instrument in writing between said Owen P. Smith and A. C. Green dated the 4th day of December, 1911, or from a duly certified copy thereof from the records of the U. S. Patent Office.

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Afterwards, on the 11th day of May, 1927, and before the filing of the bill of complaint in the instant case, as appears for the records of the U. S. Patent Office, a certain instrument in writing was executed and acknowledged before a Notary Public by Edna Green Brown, said instrument in writing as executed and acknowledged by said Edna Green Brown having been recorded in the U. S. Patent Office on May 14, 1927. In and by said last named instrument in writing, executed and acknowledged as aforesaid by said Edna Green Brown, it is stated: that A. C. Green, then alleged to be deceased, was the owner of an interest in certain patent rights issued to Owen P. Smith, as follows:

Patent No. 1,038,504, dated Sept. 10, 1912, for Lure Conveyer;

Patent No. 1,379,224, dated May 24, 1921, for Dog Racing Amusement;

Patent No. 1,410,842, dated Mar. 28, 1922, for Dog Racing Amusement;

Patent No. 1,507,439, dated Sept. 2, 1924, for Starting Cage for Racing Dogs;

Patent No. 1,507,440, dated Sept. 2, 1924, for Housing for Conveyor Cars and Tracks;

Patent No. 1,591,569, dated July 6, 1926, for Electric Car.

Said last-named instrument executed and acknowledged, as above stated, by said Edna Green Brown on the 11th day of May, 1927, states that said A. C. Green died leaving a last will and testament, which was duly probated in the Probate Court of Anderson County, Texas, under which will the said Edna Green Brown became the sole beneficiary, and said last named instrument in writing proceeds to appoint G. J. Lee, in the County of Harris, State of Texas, the true and lawful agent and attorney in fact of said Edna Green Brown to sell, convey or otherwise dispose of any and all right, title and interest which said Edna Green Brown had in each and all of said Smith patents above named, and also giving to said G. J. Lee, as attorney in fact for said Edna Green Brown, the power to collect and recover and settle in the way of claims for infringement of said letters patent or of any of the same, all as will more particularly appear from said instrument in writing dated the 11th day of May, 1927, and executed and acknowledged on the last-named date by said Edna Green Brown.

Defendant further states that afterwards, to-wit, on the 17th day of May, 1927, an instrument in writing was duly executed and acknowledged before a Notary Public,

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which said instrument in writing was recorded in the U. S. Patent Office on June 9th, 1927; that said instrument in writing was executed by William B. Robinson as executor of the estate of A. C. Green, deceased; that said instrument in writing so executed and acknowledged as aforesaid by said William B. Robinson declares that A. C. Green, then deceased, was the owner of an interest in certain letters patent issued to one Owen P. Smith and then proceeds to recite the said letters patent, the same being the six identical letters patent hereinbefore recited (U. S. letters patent Nos. 1,038,504; 1,379,224; 1,410,842; 1,507,439; 1,507,440 and 1,591,569); and said last named instrument in writing, executed and acknowledged as aforesaid by said William B. Robinson, executor of the estate of A. C. Green, deceased, then declares that said A. C. Green, then deceased, left a last will and testament which was duly probated in the Probate Court of Anderson County, Texas, under which will Mrs. O. R. Brown (nee Edna Brown) was the sole beneficiary; that said Mrs. O. R. Brown (Nee Edna Brown) was then a femme sole, being Edna Green Brown; that the undersigned William B. Robinson was appointed and qualified as executor of the estate of A. C. Green, deceased. And then the said last-named instrument in writing duly executed and acknowledged as aforesaid by William B. Robinson, executor of the estate of A. C. Green, deceased, in consideration of $10.00 and other good and valuable and sufficient consideration paid to him by Edna Green Brown, receipt of which is acknowledged, sells, assigns and conveys to said Edna Green Brown all the right, title and interest of A. C. Green, deceased, and the estate of said A. C. Green, deceased, in and to all of said above recited six U. S. letters patent granted to Owen P. Smith —all as will more fully and at large appear from the said instrument in writing or from a duly certified copy thereof.

Defendant further states that heretofore, to-wit, on May 31, 1921, the said Owen P. Smith hereinbefore referred to and the same Owen P. Smith who is named in the bill of complaint herein as the alleged inventor of the alleged inventions the subjects-matter of the several Smith letters patent in suit, executed a certain instrument in writing which was recorded in the U. S. Patent Office on Sept. 8, 1921; that in and by said instrument in writing the said Owen P. Smith declared that he was then of the City of Chicago, County of Cook, State of Illinois, and that he had made application for letters patent of the United States for a certain alleged improvement in Dog

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Racing Amusements, which application the said instrument declared Bore serial No, 321,612, on which application U. S. letters patent No. 1,379,224 have been granted; that said instrument in writing, executed as aforesaid by said Owen P. Smith on the 31st day of May, 1921, declared that said Smith was then the sole owner of all rights under the said letters patent in the State of Kansas, excepting Wyandotte County, in said State, and said instrument in writing then proceeds to sell, assign and transfer, in consideration of $1.00, to Harry J. Stockman, trustee, the said invention the subject-matter of said application No. 321,612 and the resulting U. S. Patent No. 1,379,224, for the whole State of Kansas with the exception of Wyandotte County, Kansas, for the use and behoof of said Stockman, trustee, his legal representatives and assigns, to the full end of the term for which said letters patent No. 1,379,224 had been granted, thus assigning to said Stockman, trustee, all said Owen P. Smith's right, title and interest in and to said invention and U. S. Letters patent No. 1,379,224 for the entire State of Kansas, excepting only Wyandotte County—all as will more fully appear from the said instrument in writing or a duly certified copy thereof.

Defendant further states that it is informed and believes from the records of the Patent Office, and therefore charges the fact to be, that since the date of the respective instruments in writing hereinbefore pleaded in this clause of the answer there has been no reconveyance of the interests thus disposed of in respect to the six Smith patents in suit (Nos. 1,038,504; 1,379,224; 1,410,842; 1,507,439; 1,507,440 and 1,591,569) either to said Owen P. Smith, deceased, before his death, or to Hannah M. Smith, administratrix, etc., the plaintiff in this case; and defendant therefore charges the fact to be that plaintiff in this case at the time of the filing of the bill of complaint and now had or has no right, title or interest whatsoever, so far as the territory embraced by the State of Ohio is concerned, in and to U. S. letters patent No. 1,038,504; and that at the time of the filing of the bill of complaint herein and now, plaintiff was not and is not the owner of all right, title and interest in and to the following other letters patent declared upon in the bill of complaint herein, namely, Smith patent 1,379,224; Smith patent 1,410,842; Smith patent 1,507,439; Smith patent 1,507,440; and Smith patent 1,591,569, but that, on the contrary and as appears from the records of the U. S. Patent Office, others beside the plaintiff herein are owners of and have a right, title and interest in and to all of said last named

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letters patent, as appears from this Clause 35 of this answer; and that therefore, for the reasons stated herein, there is a defect of necessary parties plaintiff to the bill of complaint herein.

Defendant further states in respect to Smith patent 1,038,504, dated Sept. 10, 1912, as appears from what has heretofore been pleaded in this Clause 35 of the answer, that, at the time of the alleged death of Owen P. Smith, the said Owen P. Smith had no right, title and interest in and to said Smith patent No. 1,038,504, so far as relates to the territory covered by the State of Ohio; that, therefore, as to said territory covered by the State of Ohio and so far as said Smith patent 1,038,504, is concerned, the plaintiff in this case (Hannah M. Smith, administratrix of the estate of Owen P. Smith, deceased) has no right, title and interest in and to said Smith patent No. 1,038,504, and therefore this suit cannot be maintained against this defendant in respect to the alleged charge of infringement as to said Smith patent 1,038,504, since the charge of infringement relates to alleged acts done by this defendant in the Western Division of the Southern District of Ohio, whereas the plaintiff has no right, title or interest in and to said Smith patent No. 1,038,504, in any part of the territory comprised in the State of Ohio.

That, as to said Smith patent No. 1,038,504, plaintiff has not now, and had not at the time of filing the bill of complaint herein, any right, title or interest therein, in and for the State of Ohio; and that said A. C. Green, his legal representative or assignee, and said G. J. Lee are necessary parties plaintiff to the bill of complaint herein; that as to said Smith patent No. 1,038,504, there is a fatal defect as to the necessary parties plaintiff in the bill of complaint herein—a non-joinder of necessary parties plaintiff.

That as to said Smith patents Nos. 1,038,504; 1,379,224; 1,410,842; 1,507,439; 1,507,440 and 1,591,569, the bill in this case is fatally defective, for non-joinder of necessary parties plaintiff thereto, and that said Edna Green Brown is a necessary party plaintiff to the bill of complaint herein.

Defendant further states, in respect to the matters pleaded in this Clause 35 of its answer, that it pleads the same under and in accordance with the provisions of Equity Rule 29.

CONCLUSION.

In conclusion, defendant states: that the bill in equity in this case is utterly without equity, and prays that the

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same may be dismissed, as to each and all of the several Smith patents declared upon in said bill, for want of equity and at plaintiff's costs.

Springdale Amusement Park, Limited
(one of the defendants named in the bill of complaint herein),
By Paul Bakewell,
J. W. Heintzman,
William E. Hess,
Its Solicitors.

Cincinnati,
Sept. 27, 1927.

INTERROGATORIES OF DEFENDANT, SPRINGDALE AMUSEMENT PARK, LIMITED, TO THE PLAINTIFF HEREIN, HANNAH M. SMITH, ADMINISTRATRIX OF THE ESTATE OF OWEN P. SMITH, DECEASED—Filed Sept. 28, 1927.

In order that the defendant, Springdale Amusement Park, Limited, (which has filed its separate answer in this case), may properly, and also without unnecessary expense, prepare its defense in this case, it submits the following interrogatories to the plaintiff herein, to ascertain, with respect to the eight Smith patents declared upon in the bill of complaint herein, as a matter of fact, which of said patents, and what claim of claims of each of said patents the plaintiff will rely upon at the trial of this case.

To the plaintiff herein, Hannah M. Smith, Administratrix of the estate of Owen P. Smith, deceased:

In the bill in this case you declare upon and charge (in general terms) infringement of, by Springdale Amusement Park, Limited, within the Southern District of Ohio, Western Division, the following U. S. letters patent, granted to Owen P. Smith, said Smith patents bearing

the following numbers respectively: Nos. 1,038,504; 1,379,224; 1,410,842; 1,507,439; 1,507,440; 1,591,569; 1,630,811; 1,630,812.

(1) At the trial of this case will you rely, so far as alleged infringement by said Springdale Amusement Park, Limited, is concerned, on each and all of the above named Smith patents?

(2) If the answer to interrogatory 1 is in the negative, then name, by the number of the patent in each case, which of said eight Smith letters patent above named you will rely upon at the trial of this case.

(3) Said Smith patent No. 1,038,504 contains five (5) separate claims. If you will rely upon this patent at the trial of this case, what claim or claims of said Smith patent will you contend at the trial has or have been infringed by Springdale Amusement Park, Limited?

(4) Said Smith patent No. 1,379,224 contains four (4) separate claims. If you will rely upon this patent at the trial of this case, what claim or claims of said Smith patent will you contend at the trial has or have been infringed by Springdale Amusement Park, Limited?

(5) Said Smith patent No. 1,410,842 contains five (5) separate claims. If you will rely upon this patent at the trial of this case, what claim or claims of said Smith patent will you contend at the trial has or have been infringed by Springdale Amusement Park, Limited?

(6) Said Smith patent No. 1,507,439 contains one (1) claim. At the trial of this case will you contend that Springdale Amusement Park, Limited, has infringed that claim of said Smith patent?

(7) Said Smith patent No. 1,507,440 contains three (3) separate claims. If you will rely upon this Smith patent at the trial of this case, what claim or claims of said Smith patent will you contend at the trial has or have been infringed by Springdale Amusement Park, Limited?

(8) Said Smith patent No. 1,591,569 contains one (1) claim. At the trial of this case will you contend that Springdale Amusement Park, Limited, has infringed that claim of said Smith patent?

(9) Said Smith patent No. 1,630,811 contains two (2) separate claims. If you will rely upon this Smith patent at the trial of this case, what claim or claim of said Smith patent will you contend at the trial has or have been infringed by Springdale Amusement Park, Limited?

(10) Said Smith patent No. 1,630,812 contains three (3) separate claims. If you will rely upon this Smith

Interrogatories of Defendant to Plaintiff Herein, etc.

patent at the trial of this case, what claim or claims of said Smith patent will you contend at the trial has or have been infringed by Springdale Amusement Park, Limited?

Note: You are requested to answer each and all of the above interrogatories.

Springdale Amusement Park, Limited, Defendant.
By Paul Bakewell,
J. W. Heintzman,
William E. Hess,
Its Solicitors.

Cincinnati, Ohio,
September 28, 1927.

ENTRY CORRECTING ANSWER—Filed Oct. 11, 1927.

By consent of Counsel, Line 15 of Clause 32 of the **Separate** Answer of the Springdale Amusement Park, Limited, is hereby corrected to read as follows:

U. S. patent to Isaac Towell, No. 245,614, dated Aug. 9, 1881.

Smith Hickenlooper.

Paul Bakewell,
J. W. Heintzman,
Wm. E. Hess,
Solicitors for Defendant.

MOTION TO DISMISS BILL—Filed Oct. 14, 1927.

Comes now Springdale Amusement Park, Limited, and moves the Court to dismiss the Bill heretofore filed in this behalf for the reason that the plaintiff has not, as required by Equity Rule No. 58, answered the interrogatories filed in writing by this defendant.

Said interrogatories were filed on the 28th day of September, 1927, and copy of same was served by mail on the counsel of record according to the rules. That issue was joined in this cause on the 27th day of September, 1927, on which day copy of answer was left with plaintiff's counsel of record.

This defendant further says that the plaintiff has not, according to the docket of this Court, been granted an enlargement of time for filing her answer to said interrogatories.

Paul Bakewell,
J. W. Heintzman,
William E. Hess,
Solicitors for Defendant,
Springdale Amusement Park, Ltd.

ORDER—Filed Oct. 26, 1927.

On hearing of the motion heretofore filed in this cause to dismiss plaintiff's petition, the hearing of which motion was had on Saturday, October 22, 1927, the motion to dismiss is overruled and plaintiff is given ten days in which to file answers to the interrogatories of the defendant, Springdale Amusement Park, Limited, and also to file her reply herein, that is to say, the plaintiff is given leave to file her answers to said interrogatories and her reply herein on or before November 1.

Enter,
Hickenlooper, J.

ANSWER TO INTERROGATORIES OF THE DEFENDANT, SPRINGDALE AMUSEMENT PARK, LIMITED—Filed October 26, 1927.

Plaintiff will reply upon all four claims set forth in patent No. 1,379,224, upon the three claims of patent No. 1,507,440, and upon the single claim of patent No. 1,507,439.

Plaintiff will not rely on any other patents or any other claims than those above mentioned.

Plaintiff will not rely upon patent No. 1,038,504, or upon patent No. 1,410,842, or patent No. 1,591,569, or patent No. 1,630,811, or patent No. 1,638112.

Hannah M. Smith, Admrx. of
Owen P. Smith Estate,
By E. Howard M'Caleb,
C. Arthur Anderson,
John E. Sater,
Murray & Zugelter,
Solicitors for Plaintiff.

(Duly verified by John E. Sater.)

REPLY TO ANSWER OF SPRINGDALE AMUSEMENT PARK, LIMITED—Filed Nov. 1, 1927.

As to the twelfth paragraph of the answer of the defendant, Springdale Amusement Park, Limited, the plaintiff replying thereto does not admit but denies that this suit is unconscionable and without foundation and to be dismissed for want of equity; that, on August 12, 1927, and when the bill was filed in this cause, said answering defendant was engaged, with the common-law lawful right so to do, in the business of conducting an amusement enterprise near the city of Hamilton, Ohio, of racing greyhounds over a course in pursuit of a lure; that the plaintiff does not, as shown by numer-

ous patents and publications, have a broad monoply in enterprises of racing greyhounds or dogs over a course in pursuit of a lure; that the devices used by said defendant in carrying on its dog races were open to inspection and that it would have appeared to plaintiff or her counsel that no devices were used by said defendant at its dog course which embodied therein and in the construction of such course anything patented by any claim found in any of the several Smith patents named in the bill; that this suit was brought by plaintiff maliciously and without probable cause or that plaintiff knew at the time of the filing of her bill or had the opportunity of knowing that said defendant had not infringed and was not infringing the Smith patents and that said defendant has not made any profits in the operation of its race course for which it is accountable and that plaintiff has not suffered any damage by reason of such operation.

Replying to paragraph (13) of said answering defendant's answer plaintiff does not admit, but denies, that commercial devices coming within the scope of the claims or any of the claims of the Smith letters patent have never been made, sold or used.

Replying to paragraph (15) of said answering defendant's answer, the plaintiff does not admit, but denies, that the allegations in her bill in reference to the decree rendered in the United States District Court for the southern district of Louisiana are immaterial and irrelevant as regards the answering defendant and as to the respective individual defendants herein, for or on account of any of the reasons mentioned in said paragraph; that plaintiff abandoned in said cause tried at New Orleans in Louisiana, either of said Smith patents Nos. 1,038,504, 1,410,842 and 1,591,569, but avers the fact to be that she merely elected not to litigate said patents in said cause; that the Smith patents numbered 1,630,811 and 1,630,812 had not been issued at the time the case at New Orleans was instituted and tried and were in no wise involved in said case; and denies that the decree rendered in said New Orleans case is without persuasive force as a precedent herein and is erroneous and unsound.

Replying to paragraph (16) of said answering defendant's answer, plaintiff does not admit, but denies, that said defendant has never at any time made, used or sold and does not intend to make, use or sell any device, machine or apparatus embodying in its construction any device, structure or combination of elements claimed or set forth in any claim of any of the Smith patents; and

that no claim in any of said patents, when construed in the light of the history of the application therefor and of the prior state of the art, can be construed as including within its scope any device, machine or apparatus made, used or sold by such answering defendant.

Replying to paragraph (17) to (33), both inclusive, as set forth in said answering defendant's answer, the plaintiff does not admit, but denies, that any of the patents and publications specifically named and mentioned in said paragraphs, or any of them, of said defendant's answer, whenever printed, granted or published, disclose want of patentable novelty or of invention, in, or priority of invention over, the several Smith patents, or any of them, named in the bill, or in or over any of the respective applications therefor; that said patents and publications limit or will aid in interpreting the claims or any of them in the Smith patents or in any of such patents; that the decree rendered in said New Orleans case and the opinion rendered therein by the trial Judge are irrelevant and immaterial in the instant case so far as said defendant is concerned, for any reason stated in said answering defendant's answer, or for any other reason; that it will appear from the production of the evidence in said New Orleans case that the defendant's counsel erroneously and improvidently did not attack the validity of the Smith patents Nos. 1,379,224, 1,507,439 and 1,507,440; and that the sole defense made in said case was that of non-infringement of said last named patents.

In reply to averments contained in paragraph (35) of said answering defendant's answer, the plaintiff does not admit, but denies, the averment and each and every of the several repetitions thereof as to all of said Smith's patents and as to each of them respectively, wherever and as often as made and however stated in said thirty-fifth paragraph, that from the averments of plaintiff's bill it fails to appear that the said Owen P. Smith at the time of his death was possessed of all the right, title and interest in and to the several Smith patents mentioned in said bill and in said paragraph (35) of said answering defendant's answer, and that it further fails to appear from said bill that Hannah M. Smith, the above named administratrix of said Smiths' estate, is possessed of all the right, title and interest in and to all or any of said letters patent, but on the contrary plaintiff, who is the widow of the said Owen P. Smith as well as the administratrix of his estate, in answer to each and every of said above mentioned averments so appearing in said paragraph (35), is informed and believes and avers that she

is possessed and is the owner of, and, since the said Smith's death at all times has been informed, believes and avers that she is possessed and is the owner of the entire right, title and interest in and to said patents and each of them, and that she is charged with the duty as an individual and as administratrix of protecting said patents and each and every of them from and against infringement.

Further replying to the allegations of said answering defendant's answer contained in paragraph (35) thereof, the plaintiff does not admit, but denies, that neither Owen P. Smith nor this plaintiff as his administratrix was not at the time of said Smiths' death possessed of all right, title and interest in and to certain of said Smith's patents declared upon in plaintiffs' bill; that as regards said patent No. 1,038,504, on December 2, 1911, said Owen P. Smith sold, assigned and transferred, for the alleged consideration of $2,000, or other consideration, to A. C. Green, Pat C. Foley, Dave A. Weiss, Ned Gill, G. J. Lee and F. J. Matzinger, respectively, the interests in said patent respectively mentioned in said defendant's answer, for the states of California, Kentucky, Missouri and Montana; that, on December 2, 1911, the said Smith, for an alleged consideration of $5,000 or other consideration, sold, assigned and transferred to A. C. Green and G. J. Lee all his right, title and interest in and to said patent No. 1,038,504, for the states of Arkansas, New York, Tennessee, Georgia and Ohio; that on December 4, 1911, said Smith and A. C. Green entered into a contract in writing, wherein said Smith expressed a desire to sell an interest in letters patent when secured on his application theretofore filed by him on December 2, 1911 (on which application it is charged that said patent 1,038,504 was issued), in respect to whatever rights said Smith might then have in said application for United States letters patent or any letters patent that might be granted thereon; that in said instrument he contracted and agreed to sell to said Green an undivided one-half interest in all patent rights that said Smith might then be entitled to or might secure to said invention, as well as to all improvements he might make on said invention, in the United States, excepting Kentucky, New York, Texas, Arizona, Arkansas, Pennsylvania, Georgia, Tennessee, Montana, California Ohio and Missouri; and that said written instrument stated in respect to said twelve stated, all right, title and interest in said invention and in said letters patent that might be granted therefor had been already disposed of; that said contract

or assignment from the said Owen P. Smith to the said Green further provided that the said Smith would make full and legal assignment of said undivided one-half interest in said invention and in said letters patent that might be granted therefor, except as to said twelve states, the rights in respect to which had already been assigned, when the said A. C. Green should have fully complied with the terms and conditions of a certain alleged contract between said Smith and said Green, alleged to have been dated November 16, 1911. The plaintiff avers that the said Owen P. Smith had not filed any application for letters patent and had no application pending for letters patent on November 16, 1911, or on December 2, or December 4, of said year; that his application which resulted in the issuance of said patent No. 1,038,504, was not filed in the patent office or pending therein prior to February 26, 1912; and that if it should appear that the said Owen P. Smith did make any assignment or assignments, sale or sales, transfer or transfers, of his interest or of any portion of his interest in and to said patent No. 1,038,504, and that he parted with his interest or any part thereof wholly or partially for the state of Ohio, such fact is wholly immaterial and irrelevant, for the reason that the plaintiff in open court, before said answering defendant's answer was filed, elected, as said defendant well understood and knew, that plaintiff would not, in the trial of this cause, stand upon or litigate therein as regards said patent No. 1,038,504. Plaintiff further avers that if it should appear that on December 4, 1911, the said Owen P. Smith entered into a written contract with A. C. Green and that said contract contained the provisions and recitals which are hereinbefore and in paragraph (35) of the said answering defendant's answer specifically mentioned and set forth, the said contract is wholly inoperative and void and the said Green never acquired any rights thereunder in and to said undivided one-half interest in said patent No. 1,038,504, or in and to an undivided one-half interest in any patent rights that the said Smith might be entitled to or might secure to said invention for which said answering defendant says application had already been made, as well as to all improvements that said Smith might make on said invention, in all of the states of the United States except the twelve hereinbefore and in said paragraph (35) specifically mentioned, for the reason that the terms and provisions of said contract (if any such contract was made) were abandoned by the said Green and were never performed and complied with by him, and for the reason

the said Green neglected and failed to pay to the said Smith the consideration mentioned in said contract, if such contract was ever made.

Plaintiff further replying to said paragraph (35) of said answering defendant's answer alleges she has no information as to the averments in said paragraph that on May 11, 1927, there was filed in the United States patent office and there recorded on May 14, a certain written instrument by Edna Green Brown, which was executed and acknowledged before a Notary Public, in which it is stated that A. C. Green, deceased, was the owner of an interest in patents Nos. 1,038,504, 1,379,224, 1,410,842, 1,507,439, 1,507,440, and 1,591,569, and plaintiff therefore does not admit, but denies, each and every of the allegations in said answer contained and hereinbefore referred to and specifically mentioned as to said instrument claimed to have been filed and recorded in the patent office, and further avers that if any such instrument was filed in the United States patent office and recorded therein, the same is irrelevant and immaterial as to any issue involved in this case.

Further replying to said thirty-fifth paragraph of said answering defendant's answer and as to said instrument claimed to have been filed on May 11, 1927, in the United States patent office by said Edna Green Brown, the plaintiff says she has no information as to the said Green having died, or his having left a last will and testament, or of the probate of the same, or of the said Edna Green Brown becoming the said Green's sole beneficiary, or of said instrument appointing G. J. Lee the said Edna Green Brown's true and lawful agent and attorney-in-fact, to sell, convey or otherwise dispose of any and all rights, title and interest which she had in each and all of the Smith patents above named and also giving to the said Lee as her attorney-in-fact the power to collect and recover and settle claims for infringement of said letters patent or any of the same, or that on May 17, 1927, an executed and acknowledged instrument in writing was filed in the United States patent office and recorded on June 9, or that any such instrument was executed by William B. Robinson as executor of the estate of A. C. Green, deceased, or that said instrument declares that said Green was the owner of an interest in certain letters patent, alleged to be the Smith patents Nos. 1,038,504, 1,379,224, 1,410,842, 1,507,439, 1,507,440 and 1,591,569, respectively or that such instrument declares that the said Green left a last will and testament which was duly probated under which he made Edna Green, then a

femme sole but now known as Edna Green Brown, his sole beneficiary, or that the said Robinson was appointed and qualified as executor of the said Green's estate, or that the instrument so executed and acknowledged by the said Robinson as executor of the said Green's estate in consideration of $10.00 and other good and valuable and sufficient consideration paid to him by Edna Green Brown, the receipt of which was acknowledged, sold, assigned and conveyed to her all the right, title and interest of said Green and of his estate in and to all of the said six last named patents granted to Owen P. Smith and plaintiff therefore does not admit, but denies, each and every of said allegations and avers that the instrument if there be such, so averred to have been executed and filed on May 11 by the said Edna Green Brown, and the recitations and statements therein contained, and in the instrument claimed to have been executed by the said William B. Robinson and filed in the patent office of the United States, if such instrument was in fact executed and filed, and the several averments therein, are irrelevant and immaterial and without pertinency to the instant case.

Further replying to the averments of the thirty-fifth paragraph of said answering defendant's answer, the plaintiff alleges that she has no information that on May 31, 1921, said Owen P. Smith executed an instrument in writing, which was recorded in the United States patent office on September 8, 1921, which declares he was then of the City of Chicago, Illinois, that he had made application for letters patent for an improvement in dog racing amusement, which application bore serial number 321,612, being the application on which United States letters patent No. 1,379,224 was granted, or that said instrument declared said Smith then to be the sole owner of all rights under said letters patent in the state of Kansas excepting Wyandotte County, and then proceeded to sell, assign and transfer, in consideration of one dollar, to Harry J. Stockman, trustee, the said invention the subect-matter of said application and the resulting United States patent thereunder, known as No. 1,379,224, for the whole state of Kansas with the exception of said Wyandotte County, for the use and behoof of said Stockman, trustee, his legal representatives and assigns, for the full term of said letters patent, and that the said Smith thereby assigned to the said Stockman as trustee all of said Smith's right, title and interest in and to said patent No. 1,379,224, for the entire state of Kansas excepting Wyandotte County only. Plaintiff, therefore,

does not admit, but denies that if an instrument was filed in the United States patent office by the said Edna Green Brown, as charged in said paragraph (35), and contains the statements and recitals in the said answer and hereinbefore mentioned, and if the said William B. Robinson, as executor of the estate of A. C. Green, executed the said instrument hereinbefore and in said paragraph (35) mentioned, containing the statements or declarations in such answer and hereinbefore recited, such said instruments and each of them and the statements, declarations and recitals in them and in each of them are wholly irrelevant and immaterial and not pertinent to any issue raised in this suit; and plaintiff further does not admit, but denies, that if any such instrument as is hereinbefore and in said thirty-fifth paragraph of said answer mentioned, was executed and delivered by the said Smith to the said Stockman as trustee, that such instrument and the statements, declarations and recitals therein are wholly irrelevant and immaterial and without pertinency to any issue involved in the instant case.

Further replying to the averments in paragraph (35) of said Answering defendant's answer, the plaintiff does not admit, but denies that she is not and was not at the time of the filing of her bill herein, the owner of all right, title and interest in and to the Smith patents Nos. 1,379,224, 1,410,842, 1,507,439, 1,507,440, and 1,591,569; that A. C. Green, his legal representatives or assigns and the said G. J. Lee are necessary parties to the bill of complaint; that there is any fatal defect as to necessary parties plaintiff in and to the plaintiff's bill or a nonjoinder of necessary parties plaintiff; and that the said Edna Green Brown is a necessary party plaintiff herein.

Wherefore plaintiff prays as in her bill.

Hannah M. Smith Administratrix of the estate of Owen P. Smith, plaintiff,
By: E. Howard M'Caleb,
C. Arthur Anderson,
Murray & Zugelter,
J. E. Sater,
Attorneys for Plaintiff.

(Duly verified)

STIPULATION—Filed February 11, 1928.

It is stipulated by and between solicitors for the plaintiff and solicitors for the defendant in the above entitled cause that, at the hearing of this case in the District Court, either party may use in evidence printed or photostatic Patent Office copies of the specifications and drawings of any patent pleaded in plaintiffs' bill or pleaded in the answer in this case, with the same force and effect as the original or a duly certified copy of any such letters patent.

Murray and Zugelter,
Solicitors for Plaintiff.
Paul Bakewell,
William E. Hess,
J. W. Heintzman,
Solicitors for Defendant, Springdale Amusement Park, Ltd.

Cincinnati, Ohio,
February 11th, 1928.

STATEMENT OF EVIDENCE—Filed .....

Be It Remembered that on the 20th day of February, 1928, and during the February term, 1928, of the District Court of the United States for the Southern District of Ohio, Western Division, the following proceedings were had before the Hon. Smith Hickenlooper:

Appearances: Messrs. John E. Sater, Columbus, Ohio, E. Howard M'Caleb, New Orleans, La., and C. Arthur Anderson, St. Louis, Missouri, on behalf of the plaintiff. Messrs. Paul Bakewell, St. Louis, Mo., J. W. Heintzman and William E. Hess, Cincinnati, Ohio, on behalf of defendants.

And thereupon, the plaintiff, to sustain the issues in her behalf, introduced and offered in testimony the following evidence, to-wit:

Statement of Evidence

Certified copy of letters of administration of Hannah M. Smith, administratrix of the estate of Owen P. Smith, deceased, marked Plaintiff's Exhibit No. 1;

Certified copy of U. S. Letters Patent No. 1,379,224, granted May 24th, 1921, to Owen P. Smith for improvements in dog racing amusements, marked as Plaintiff's Exhibit No. 2;

Also certified copy of U. S. Letters Patent No. 1,507,440, granted to Owen P. Smith on September 2nd, 1924, for improvements in housings for conveyor car and tracks, marked Plaintiff's Exhibit No. 3;

Also certified copy of U. S. Letters Patent to Owen P. Smith, No. 1,507,439, granted September 2nd, 1924, for improvements in starting cages for racing dogs, marked Plaintiff's Exhibit No. 4.

The foregoing plaintiff's Exhibits Nos. 1, 2, 3 and 4 were thereupon admitted in evidence.

THOMAS A. KEENE, called as a witness, on behalf of plaintiff, having been first duly sworn, was examined by Mr. M'Caleb, and testified in behalf of the plaintiff as follows:

My full name is Thomas A. Keene. I live at 5458 North Johnson Street, New Orleans, Louisiana. I am a practical construction engineer and have been such since about 1912. I knew Owen P. Smith, who died January 15th, 1927. I was a pallbearer at his funeral.

Q. 8. Mr. Keene, have you had any experience in building and inspecting dog racing tracks operating under the Smith patents?

Objection by Mr. Bakewell unless witness particularly specified the particular patents already introduced in evidence, because there are eight known patents, and the evidence should be confined to the issues.

The Court: We will permit him to answer as to one or more of the patents in suit.

A. The first two tracks that I worked on was under that old 1912 patent but I built five under this 1921 patent, including that starting cage and the housing. The places where I built these dog race tracks under the Smith specifications under the old 1912 patent were first one at the Madison Kennel Club, Fairmount City, Madison County, Illinois. The next one was the Hawthorn

Kennel Club at Cicero, Illinois, a suburb of Chicago; the Highland Kennel Club at Butte, Montana; the Mound Kennel Club at Milwaukee, Wisconsin; and the Williston Kennel Club at St. Louis, Missouri. I have had occasion to inspect dog race tracks constructed under the Smith patents, to which you refer, in other places and operating under license from Owen P. Smith, which dog race tracks and the location thereof, are Metric Kennel Club at New Orleans, Louisiana; The Kennel Club at Shreveport, Louisiana; one at Galveston, Texas; one at Charleston, West Virginia; Steubenville, Ohio; Toledo, Ohio; Rochester, New York; Miami, Florida; Montreal, Canada, and Superior, Wisconsin. I believe that is about all, but I haven't a list of them.

"Q. 15. Do you know how many dog racing tracks are in existence and that have been built and operated, under the Smith patents by Smith's licensees, as well as by Smith himself, or by anything in which he was interested?

Mr. Bakewell: I object to that unless confined to the three particular patents.

The Court: I will sustain the objection. I don't see that that has any particular bearing on the issue.

Mr. M'Caleb: I want to show the instant popularity of this sport, if your Honor please. That is the object of it.

The Court: I think you can do that but not by specifically limiting your question to whether or not they came within the claims of the several patents, thus putting in issue a collateral fact with which we are not concerned at all, and asking this witness to pass upon the reading of those claims upon the tracks built by him.

Mr. M'Caleb: I will modify my question."

Q. 16. Will you state, Mr. Keene, approximately how many dog racing tracks are in existence in this country, not only operating under Smiths' license, but anyone—all dog racing tracts?

Question objected to by Mr. Bakewell as utterly irrelevant and immaterial.

The Court: He may answer.

A. There is in the neighborhood of, I should judge, 35 or 38 tracks, somewhere in that neighborhood. I could

not tell you exactly. I would have to look up to tell you the exact amount. I had occasion to visit the dog racing tracks of the Springdale Amusement Company. I think it is located in Hamilton County, just outside of Cincinnati. I do not know the exact location. It was before this suit. I inspected or observed the devices used for dog racing at that part before this suit was filed. I saw the devices there in use and out of use. There was a race course there suited for dogs. They had a covered rail track adjacent on the inside, a covering over the track having a continuous opening on the side towards the track, an electrically operated car provided with an arm extending horizontally through the opening in the casing and a lure mounted at its outer end. The sketch taken from the affidavit made by you in this case, marked Plaintiffs Exhibit "P-5" represents and is a section of the housing used at the Springdale Amusement Company. In this housing, there was a conveyor car and tracks. The horizontal arm extends through the continuous slot on the end of which was a lure mounted on the platform, a little platform right on the end of the arm that the lure is bolted to. The arm was on a disk, there was a pair of disks, one is fastened on a sort of a bracket on the frame of the car and the arm is welded to the other. There is a bolt goes through the center there, fastened rigidly I would call it when in operation, stationery and rigidly fastened. These is a housing for concealing the cars and tracks. There are posts on either side of the tracks, timbers attached to the posts to form a frame and boards attached to the timbers and posts to form a continuous enclosure over the side tracks, having a continuous opening in one side and truss rods attached to the closed side of the housing and adapted to support the side of the housing above the continuous opening and keep it from deflecting. There were ties and two rails at the bottom of that housing. There was a third rail in there too. Plaintiff's Exhibit "P-6", taken from my affidavit filed in this case, represents a section of a starting cage at Springdale Amusement Park that I seen both in and out of use at the Park. The starting cage for racing dogs is a box-like structure divided into eight compartments, the walls are formed of boards and there is individual rear doors for each of the compartments and a single front door hinged at its upper end at the top of the box. Inclined members secured to the top of the box project upwardly and outwardly beyond the base of the front door. Airplane shock rubber is fastened to the outer end of the inclined members and

to the door and there is a latch at the bottom to hold the door closed against the tension of the airplane shock rubber, which is adapted to raise the door, upon the release of the latch. They also have there, which I did not show, a post on each end with sort of counter-balanced weights to kind of hold the door open. I would say the inclined members are inside the plane of the side walls of the box a few inches. I did not measure it. The inclined members were parallel.

The sketches "P-5" and "P-6" were offered in evidence with the testimony of the witness, to the introduction of each of which Mr. Bakewell objected, because—first—the so-called housing sketch, which is supposed, according to the testimony of the witness, to control the motor and the arm, was incomplete, in that it utterly fails to show the motor or the arm carrying the lure, and if the witness saw the thing and could make that drawing, he could make the complete thing, and the Court would then have before it what the defendant is using.

Objection to the drawing of the dog cage or house is made because it is only a side elevation and does not show an essential part of the structure in suit, which relates to dog cages, to-wit, the construction of the partitions, and because the drawing is incomplete, and if the witness saw those things, he could have presented a picture of the actual structure.

The Court: The objection goes to the weight of the evidence or its probative force, rather than its admissibility. I will permit the diagrams to be offered for what they are worth.

And thereupon the two sketches were admitted in evidence, the housing sketch being marked "Plaintiff's Exhibit #5", and the starting cage sketch being marked "Plaintiff's Exhibit #6".

The partitions between the stalls were made out of boards. I believe they were tongue-and-grooved boards. The inclined members were wood,—two by fours. There were individual rear doors to each of the stalls to the dog cage device. In operating the starting cage, they would hook this airplane shock rubber by some—I guess you would call them harness snaps or I bolts in the two by fours' in the bottom of the door, close the door and latch the front door, that is, the single door that covers all the stalls. Then the man that operates the cage goes around the rear of it and raises the individual doors and the dog men put their dogs inside the stalls. The

lure is started and brought around and when it gets a certain distance in front of the cage, the man pulls the lever releasing the latch and this airplane shock rubber, together with the rope the man pulls in the back, helps to raise the door. The door opens upwardly and outwardly. The differences, I observe, between the starting cage out at the Springdale Park and the starting cage under the Smith specifications, are that Smith's partitions are built of wire mesh partially covered with fabric and it calls for the inclined members on the top divergent. This starting cage at Springdale has wood partitions and the inclined members are parallel. That is the only difference. They operate the same, the function is the same, the result is the same. As to the lure-carrying device at the Springdale Park, they have a conveyor car which is electrically operated; it is operated off the track by a controller. They have a motor geared to the rear wheels of the conveyor car and then they have an arm on the conveyor car that extends through a continuous opening in the housing. The arm, I would say, is fastened rigidly to the car. It is fastened by a bracket and a disk fastened to the bracket and another disk that is fastened to the arm. They are held rigid by a sort of a trip. I believe that the trip after the race is open but while the car is in operation, the arm is held rigid. There is a lure on the outer end of the arm. There are tracks under the housing. The third rail furnishes the power to the motor. There is a shoe that drags on the third rail and furnishes the current to the motor. The housing or covering is continuous around the track. The roof of the housing slopes toward the infield very slightly, just enough to drain the water, I suppose, off the top. The roof for support was fastened to the rear post and then a truss rod at its rear end and to support the free end, sort of a cantilever truss I would say it is. I have known Owen P. Smit. since 1909 and worked with him on two tracks besides these devices under the patent of 1912, one at Tucson, Arizona, and one at Houston, Texas, in 1910 and 1911, right around in that neighborhood. Those tracks were constructed under the 1912 patent. It was for a tunnel in the center of the track with a vertical arm extended through a slot in the top of the tunnel. Those tracks were abandoned. He could never get the apparatus to work and he abandoned them as impractical.

Objection to last statement by Mr. Bakewell because the patent of 1912 was declared upon in the third clause of the Bill, under oath, as a new and

useful invention that had gone into use and plaintiff is now pretending that the device was inoperative.

Objection sustained.

From 1909 on, I know Owen P. Smith was working all the time, trying to perfect a dog racing device. I had never heard of, or seen a dog race prior to 1921 and this dog racing patent.

Objection by Mr. Bakewell as immaterial as it is not a question of who first had a dog race.

Judge Sater interposed that he thought it would be material whether the racing was done, using an artificial lure or not.

The Court: He hasn't been asked that.

Mr. M'Caleb: I will add—a dog race in pursuit of a mechanical lure.

Mr. Bakewell still objects for the same reason above stated.

The Court: What is the question?

(Question read): He said he built tracks in 1910 and 1911 for dog racing in pursuit of a mechanical lure.

The Court: He my answer. Let us make progress.

The witness answered "no".

I could never get a complete dog race out of the device made for Smith in Tucson, Arizona, or Houston, Texas. We always wrecked, or had some trouble with it before the race was over.

Q. Mr. Keen, do you know when was the first time that suits for infringement were filed on behalf of Owen P. Smith, about what year?

Objection by Mr. Bakewell. Objection sustained.

A. I was with Mr. Smith in 1925.

Q. Before 1926 or 1925 no one operated dog racing under any devices other than Smith's or his licensees?

I know of no infringement prior to 1925.

Cross-examination by Mr. Bakewell:

My age is thirty eight. I am employed by Mrs. Smith in this case. Since she was appointed Administratrix, I have been her personal representative, have been employed by her since that time and am still employed by

her. The 1912 patent referred to in my direct examination, No. 1,038,504, granted to Owen P. Smith for lure conveyer and dated December 10th, 1912, is the one that was used at Houston, but the one at Tucson, Arizona, in 1910 just had the arm right on the motor—never had the springs in there to let the arm yield. I made the drawing marked "Plaintiff's Exhibit 5" around the 22rd of August sometime around that—the day following I went out to see the device out there, on the 23rd of August, 1927. When I saw the device at the Springdale Amusement Park, Ltd., near Hamilton, Ohio, there was a motor car there and an arm fixed on the car bolted at its inner end to a disk and the other end of that arm carried a stuffed rabbit, a lure.

Q. 15. What do you call a lure. Why didn't you include a picture of that device? If you made a picture of the housing, etc., and the tracks, why didn't you make a picture of that at the same time?

A. I don't know just why I omitted it. I could have done it just as well. I would recognize a picture of the device used at the Springdale Park of the arm and the lure, if shown to me. I was present in Court at the argument of the preliminary injunction of this case before Judge Hough at Steubenville, Ohio, on September 8th. I had, at that time or prior thereto, not seen and read the affidavit filed by George W. Heintz on behalf of the defendant in that case. I did not examine it. I read it over the other day but just glanced at it. I did not pay much attention to it. There were photographs and drawings of the devices at Springdale Park attached to the affidavit. The photographs and drawings attached to the affidavit show the conveyer car, the lure-carrying arm and the lure that is used there. I think that is a correct photograph of that device; it looks similar to it. There is no wheel at the end of that lure-carrying arm in that device. The arm is supported by the disks; it is rigidly supported. I have said there was no wheel attached to the outer end of the arm. The next photograph attached to the Heintz affidavit and filed in this case is a different view of the same car and shows the roof of the housing supported with a truss rod in the back. The next picture, the blue print attached to the Heintz affidavit, shows the construction of the housing, as I saw it at Springdale Park; it must have been taken on the turn because the tie is kind of slanting, but it is a correct view of the housing. Defendant's Exhibit D attached to the affidavit of Heintz, represents a rear view of the starting cage with the individual doors raised up and shows

the partitions between the dog stalls and shows them of wood. The dog stalls seem by me at Springdale Park last August when I made this sketch, were wood. The photograph marked Defendant's Exhibit E, attached to the affidavit of George W. Heintz, represents a front view of the starting cage with the front door open. I see in that photograph the partitions between the stalls there are of wood, plain boards, one placed upon the other.

Defendant's Exhibit F, attached to the affidavit of Heintz, is a view of the starting cage with the front door closed. I think it is the same starting cage that I saw at Springdale Park last August. It looks just like it. It is the same cage. The pencil drawing made by me marked Plaintiff's Exhibit 6, is merely a section of the cage. It shows the partition between the stalls and says "walls formed of boards". That is written in there. The picture does not show the boards but states that the partitions are formed of boards. I made the drawing of plaintiff's Exhibit 6 and put the writing on it that appears there the day after I went out there. I think it was the 22nd or 23rd of August—sometime around there.

Thereupon the five photographs and one blue print, attached to the affidavit of George W. Heintz, which was filed in this case on motion for preliminary injunction on September 3rd, 1927, and bearing date of September 2nd, 1927, were detached from the affidavit and offered and admitted in evidence as identified by the witness, representing the defendant's device at Springdale Park.

Defendant's Exhibits A, B, D, E and F and the blue print marked Defendant's Exhibit C now handed to me look just like the devices there at Springdale. I could not swear they are the same because I could not tell when the pictures were taken, but they resemble the devices. They are the same photographs and blue print formerly identified by me.

The five photographs and one blue print so identified by the witness and offered in evidence by counsel for defendants are made a part of this record, marked Defendants' Exhibits Nos. A, B, C, D, E and F.

I have seen a copy of the United States Creveling patent No. 1,481,313, of January 22nd, 1924, for animal racing track, which has been detached from the affidavit of Heintz, and that device there is practically the same as this, the retraction of the arm insofar as the construction of the arm is concerned, and in the way it is fastened to

the carriage. It is the patent under which I understand the arm—just the arm—of the defendant's device is made.

The witness, still referring to the device illustrated in the Creveling patent No. 1,481,313, stated as follows, in answer to XQ 52:

"XQ 52. And the way the arm is fastened to the carriage?

A. Yes. As I understand that, that is for the retraction of the arm, the lure-carrying arm."

I am the same Thomas A. Keen that made an affidavit in this case on the motion for preliminary injunction and who testified for the plaintiff in the Owen P. Smith's Administratrix vs. The American Electric Rabbit Racing Association and others, in the U. S. District Court, at New Orleans. In the construction of the device of the Springdale Amusement Park, Limited, which I saw in August, 1927, the housing and the motor-carrying lure were placed on the inside of the track. The courses over which the hounds run in pursuit of a lure is constructed like race courses are generally constructed with a tip from the outside towards the inside, particularly on the curves. They are all graded that way. I could not say exactly what the grade was out here but we grade our track two feet—we have a too foot drop in the drains. I do not know what the Springdale was; I never measured it.

Redirect Examination by Mr. M'Caleb:

I can read drawings.

R. D. Q. 2 Will you make a comparison of these photographs and also the Creveling patent with the Smith patent and the drawings and the specifications of that patent and state to the Court, what differences, if any, there are in the two, between the two sets of devices, as shown by these photographs and the drawings of these patents?

Objection by Mr. Bakewell, because the Court sees the photographs and has the drawings and specifications.

Objection overruled.

In the first Smith patent, No. 1,379,224, the difference between the Smith lure conveyer and the Creveling is that the Smiths' arm is supported at its outer end by a wheel, while in the Creveling device, the arm is supported

in its inner end by a pair of disks and they are bolted together, and there is a latch that fits in a notch in the disk, which I would say makes the arm rigid while in operation. The Springdale housing is on the inner side of the race course and the roof of the housing slanted toward the infield slightly. As to the advantage or disadvantage in sloping the roof in that way, whatever rains falls on the top of the housing was drained to the infield but the disadvantage of the housing being located on the inside is that the entire track drains into the housing instead of draining away from it, and if your housing is built high, you cannot see the dogs if they are running close to the housing on the back stretch, because a greyhound will average about eighteen inches in height. I did not measure the housing but it would appear to be about eighteen inches. It was five or six inches above the grade of the track. There was a board there to prevent water from running into the housing. Then there was about a six inch slot and a two by four rafter, I would call it, and a board in the top, making it in the neighborhood of about eighteen inches. I mean eighteen inches from the top of the race course. As to the starting cage, in the Smith device, the partitions are formed of wire mesh partly covered with fabric. In the Springdale device, the partitions are made of board. And in the Smith device, the inclined members that are fastened to the top of the box are divergent and in the Springdale box they are parallel. That is all the difference I can see outside of the Springdale door, which is much heavier than the Smith door. (At this point the photographs and blue prints previously referred to by the witness were handed to the Court at its request.)

The conveyer car, carrying the lure, goes at different speeds around the course. It will average somewhere between thirty eight to forty eight miles an hour, according to the speed of the dogs. It will vary a little. There is an advantage or disadvantage between the horizontal arm being rigid and the arm being supported by a wheel with the respect to the speed of the car. I think that in the rigid arm, the vibration of the car will in time crystallize the arm and cause it to break off. I don't believe that condition would occur where the arm is supported by a movable support. The Smith arm projects five foot eight inches from the face of the housing to the track. The horizontal arm of the defendant's device—it would appear to me—projects approximately three feet—it may be a little bit more or less. I did not measure it.

Thomas A. Keene Charles H. Terry

R. D. Q. 15. What is the effect of the difference in length upon dogs racing after that lure?

Objection by Mr. Bakewell as immaterial and that patent does not specify anything about the necessary length of the arm.

Objection sustained.

Judge Sater: If an inferior construction is shown, that the same system is adopted but not giving as good a result, that it is simply a difference in degree, it becomes material.

Objection sustained and exception taken by plaintiff.

I viewed, not up in the grandstand, but at the foot of it, at the end of the roof, the races at the Springdale Amusement Park. I did not see the entire race. In the back stretch you could just see the backs of the dogs unless they was out to the outer side of the track. When they was close in to the housing, you could not tell what dog it was. The placing of the housing on the inner side obstructed the view of the dogs on the back stretch.

Recross-examination by Mr. Bakewell:

I say that it is my opinion that if the arm is rigid and not supported at its outer end by a wheel, that it would crystallize and break off by the vibration. As a matter of fact, I know it happened, because Mr. Smith tried the rigid arm and discontinued the use of it. I believe he found the rigid arm objectionable and that is why he put the wheel at the end, because the rigid arm was not satisfactory.

CHARLES H. TERRY, called as a witness on behalf of plaintiff, having been first duly sworn, was examined by Mr. M'Caleb, and testified as follows:

My full name is Charles H. Terry. I live at 2234 Highland Avenue, Cincinnati. My profession or occupation is that of a construction engineer. I studied engineering at West Point and have been an engineer ever since I left there. I have acted as engineer for myself in business until 1914; then I went to work for the Cordon-Van Tine Company of Davenport, Iowa; then for the Bircher Lumber Company, Pittsfield, Massachusetts; then was made a captain of engineers in the army. I was

on the other side and after that with the Foundation Company of New York, N.-G. Petri, Contractor of Denver, the Bishopric Manufacturing Company here. I had occasion to visit the Springdale Amusement Park some time last year, 1927. It was some time the latter part of August, I think about the 20th or 22nd. I observed their dog racing devices I saw in use a lure-carrying or a lure-conveyer device for carrying a stuffed rabbit. When it was taken out of use, it was taken out at the back side of the track. I did not see it. I saw this oval on the inside of the dirt race course, low shed type of covering or housing, constructed generally of a cantilever roof deck with a slot facing the dirt race course. Around the entire perimeter of the housing and through this slot was a wooden arm, I should say four by four inches. This arm was apparently rigidly fixed to the small electrically propelled carriage that followed the tracks under this roof deck. On the outer end of this was placed a stuffed rabbit. This car was then set in motion and the dogs followed it around the track. I noticed the housing or shed covering. There was in its construction a series of posts planted in the ground a ound the inside perimeter of the housing, with a simple cantilever truss attached to these posts, which supported the wood roof sheathing or decking. Boards were attached to the upper members of the truss to form a covering. The starting cage was like a small square quadrilateral shed, I should say about five feet in height at its front end. At the rear it had eight small doors leading to eight compartments inside this box or shed, and the front end of it was a single door covering the entire front end, hinged at the top. Over the top of this shed or box were two beams, again of cantilever construction, anchored at the back end and projecting over the front, which had a loop of some kind of which, before they put the dogs in, they attached some sort of an elastic cord. The other end was then stretched and fastened to the bottom edge of the same door. There was another latch arrangement at least on one side of the door, I think on both sides of the door, at both ends, that when the latch was released this elastic cord and the counterweights that went back over these cantilever beams lifted the door up, hinged on its top end, outward and upward. There was not anything that supported the horizontal arm; that was again a cantilever construction. It was anchored only to the inside end of the car. It had a rigid connection.

Charles H. Terry

Cross-examination by Mr. Bakewell:

I did not make drawings or photographs of the devices I saw at the Springdale Amusement Park.

The witness was then asked by defendant's counsel, as follows: "XQ2. Please look at the photographs marked Defendant's Exhibits A, B, D, E and F, which have been identified by the witness who preceded you on the stand, and state how those photographs correspond with or differ from the devices that you saw at the Springdale Amusement Park in August of last year."

Defendant's Exhibit B is apparently the same type of construction as the housing out there. I did not inspect the details of the carriage in other respects, as to the carriage, etc, as shown in such Exhibit B. I only saw it from the other side of the track. This might be the same carriage, only, as I remember it; there was a wooden beam there instead of this metal beam that projected out on the track. This defendant's Exhibit D seems to be the same tpye of the individual doors at the rear of the starting box. Defendant's Exhibit B shows the same principles of front door of the starting box with the door open. Defendant's Exhibit F is the same type of starting box with the door closed. I did not measure those starting boxes or put my hand on them. I looked them over very closely. I could see the partitions between the stalls. They were boards. I was on the other side of the track from the "truss and so on" that I spoke of, from that apparatus, across the dirt track. The width of that track, I should say, is in the neighborhood of twenty five feet. I saw it from that distance. The device shown in defendant's Exhibit C, speaking now of the housing particularly, which I saw at the Springdale Amusement Park, last August, is practically the same type except I could not see any of the braces on the inside.

"XQ15. Well, you spoke of a truss. If there was any truss in that device you saw twenty-five feet away where was that truss? A. These three members here (indicating) would constitute the truss.

XQ16. Just ordinary braces, two by four braces, weren't they? A. These three members here constitute the truss that I spoke of.

Charles H. Terry.

XQ17. Will you specify that to the Court? Put letters of reference on them so as to indicate. A. The posts, the supporting beam, and this tie rod."

I was standing about twenty five feet away and they might have been there. I would not say they were not there. These three members here (indicating) would constitute the truss I spoke of and saw twenty five feet away. These three members here constitute the truss I spoke of on which I put letters of reference so as to indicate them, the posts, the supporting beam and its tie rod.

Redirect Examination by Mr. M'Caleb:

A tie rod is merely a truss rod.

The Court: Just a common case of cantilever construction of this roof?

Yes.

The Court: That has been known for ages?

Yes.

There would be no difference at all in function, operation or result, or in operation between those inclined members being parallel or if they were divergent, as long as these points on the outside were relatively fixed as they are now.

"RDQ4. Now, what difference would there be between the partitions made out of wood and the partitions made out of wire mesh or wire mesh partly covered with fabric, in function, operation and result?

Mr. Bakewell: I object to that, your Honor. That is clearly incompetent. It is not a question of function performed; it is a question of whether or not the patentee had limited himself to the specific form set forth in his claims or had limited himself to certain claims irrespective of function.

The Court: It is quite clear there is a difference in function and use. One can be seen through and smelled through and the other is solid.

Mr. M'Caleb: I just wanted to get it from the witness.

The Court: It is quite apparent to the court.

Mr. M'Caleb: There is no use of my asking the question as to the difference in function between airplane shock rubber and springs, either?

Charles H. Terry

The Court: There is no necessity of that.

Mr. M'Caleb: That is all,

Judge Sater: It seems to me, your Honor, there is no difference between the parties as to construction. We are not going to offer any further evidence along that line. We admit there are some elements of construction different from the patents; the witnesses have so testified. It then becomes a question of law from that point.

The Court: To what are you directing your remarks now?

Judge Sater: I am directing them to the court, but I say we will offer no more evidence upon the question of construction.

The Court: All right; that is satisfactory to the court."

J. C. MORLEY called as a witness on behalf of plaintiff, having been first duly sworn, was examined by J. E. Sater and testified as follows:

My name is J. C. Morley. I live in St. Louis and have been interested as a dog fancier in dog racing about thirty five years. I first learned of dog racing by means of an artificial lure in 1921.

Objection by Mr. Bakewell on the ground that such is not an issue in the case.

Objection overruled.

I have seen lots of racing among dogs in the last thirty five years, but that is the first I ever heard of racing with those electric rabbits. In 1921, O. P. Smith operated in East St. Louis. I never heard before of dog racing by means of an artificial lure. They chased jack rabbits prior to the use of the lure, live rabbits. That was known mostly as coursing.

Cross-examination by Mr. Bakewell:

I have lived in St. Louis about forty five years. I came there in 1881. I have not traveled much. I have been down in Louisiana and New York, Illinois, Massachusetts, Rhode Island. Those are the only States I have been in.

Redirect Examination by Mr. J. E. Sater:

I read the journals.

Objection by Mr. Bakewell.

Objection sustained.

FRANK SCHRAUT being called as a witness on behalf of plaintiff, having been first duly sworn, was examined by J. E. Sater and testified as follows:

My full name is Frank Schraut. I live in St. Louis, Missouri, and was interested in the racing of fancy dogs and exhibiting them about the country. I was racing in Brentwood, St. Louis County, forty years ago, and on the St. Louis tracks; Davenport, Iowa; Dallas, Texas. We were coursing at that time with racing dogs and used, as attractive to the pursuing dogs, a live rabbit. The first time I saw the use of an artificial lure in dog racing was over in East St. Louis at the St. Clair track. I read of artificial lure in dog racing in the paper previous to that, perhaps a year or so before. I think it was in 1921 that I first saw the racing with an artificial lure.

Cross-examination by Mr. Bakewell:

I am sixty years of age and am a waiter and breeder of canaries and have lived in St. Louis over forty years. I have been in Chicago and in Springfield, Illinois, and have traveled through other States with my dogs when we had coursing. The other States being Davenport, Iowa; Dallas, Texas. I don't remember exactly the year I was in Dallas, Texas. We ran for the Waterloo Cup. I really don't remember the year. I met Mr. Owen P. Smith down there. It was a year or two before that Waterloo, or the year before that, when I was in Iowa. I don't remember exactly the year. I was last in Chicago ten years ago. I was in Springfield, Illinois, forty years ago. I came first to Springfield and then to St. Louis.

Redirect Examination by J. E. Sater:

I first saw the use of a lure in East St. Louis. I think Mr. Smith was operating the track. I know I met Mr. Smith right there. I spoke to him.

T. W. SPENCER, called as a witness on behalf of plaintiff, having been first duly sworn, was examined by J. E. Sater, and testified as follows:

My name is T. W. Spencer. I live at Wichita, Kansas, and have been interested in the matter of dog racing around Wichita, Oklahoma and Missouri. I have raced in all five States. I first learned of dog racing with the

T. W. Spencer

use of an artificial lure in 1921 at Tulsa, Oklahoma. In the fall of 1921, we was putting on what we called a coursing meet, a regular coursing meet, and later on some people sent us some circulars, and so they built us a track next fall and winter, and it turned out to be Owen P. Smith. To my knowledge, we used live rabbits, up until 1921, to attract the hounds to cause them to race.

Cross-examination by Mr. Bakewell:

I am no relation to the plaintiff in this case. I used to work in the Fire Department at Wichita, Kansas, up until eleven years ago this April. I was born in Franklin County, Ohio. I went from Franklin County to Wichita when I was thirteen years old. I was in Texas off and on a few days, a day or two at a time, you know—go down to the race meet for a couple of days. I was there five years ago or six years ago. I was in Missouri in '22; in Nebraska in '17. I have been around at course meets at different places all around. I have been in Kansas most of the time and Oklahoma. When I speak of course meets, I mean live rabbits. Course meets with live rabbits are still had. It is nice sport.

Redirect Examination by J. E. Sater:

I began coursing in 1881 when nothing but a boy, the first hound I ever owned. The use of the lure has had an effect in the matter of the rearing and the price of greyhounds.

Objection by Mr. Bakewell as immaterial.
The Court: Well, we will receive it simply as this witness' opinion.

I raise greyhounds, am a breeder and seller myself. I judge the change, the effect of the use of the lure in the price of dogs is three times the price. We used to could buy a top notch dog for $35.00 or $40.00. Now it will cost you $500.00. It has caused people to breed better dogs.

Objection by Mr. Bakewell as irrelevant.
Overruled.

By The Court:

Q. This range in price has been due to the fact that they are establishing tracks throughout the United States now in which this racing is conducted, is it not?

T. W. Spencer

A. Yes, sir, I think so.

Q. All of these tracks are run very much on the same basis?

A. Well now, I can't say on just but the O. P. Smith tracks, what they call the Association tracks. I never was on any other track.

A. And O. P. Smith was very influential in establishing these tracks throughout the country, was he not?

A. Yes, sir.

Q. There is a good deal of betting on the dogs?

A. Not very much. The track has run several years and I ain't seen no betting at all.

Q. Did you ever know of a dog fancier or anyone who went to these races that did not bet on a dog?

A. They all do, likely.

Q. They all do, don't they?

A. Some of them don't.

Recross-examination by Mr. Bakewell:

As a lover of sport, as to racing with a good course and hounds after a live rabbit or watching one of these that runs a mechanical lure around, I like the dead rabbit the best.

And thereupon the plaintiff rested.

Defendants thereupon, to sustain the issues on their behalf introduced and offered in evidence the following exhibits, each and all of which were admitted in evidence:

Exhibit A, photograph of defendants' device.
Exhibit B, photograph of defendants' device.
Exhibit C, blue print of defendants' device.
Exhibit D, photograph of defendants' device.
Exhibit E, photograph of defendants' device.
Exhibit F, photograph of defendants' device.

Defendants' counsel introduced said Exhibits A, B, C, D, E and F (one blueprint and five photographs) in connection with the statement then made by him to the Court that defendants' counsel introduced said exhibits in evidence for the purpose of identifying the construction of defendants' devices, each and all of said exhibits having been previously identified as illustrating defendants' devices by plaintiff's witness, Keen.

Exhibit G, certified copy of patent to Creveling, No. 1,481,313, January 22, 1924.

Defendants' Exhibits

Exhibit H, certified copy of patent to Owen P. Smith, No. 1,379,224, May 24, 1921.

Exhibit I, certified copy of patent to Owen P. Smith, No. 1,507,439, September 2, 1924.

Exhibit J, certified copy of patent to Owen P. Smith, No. 1,507,440, September 2, 1924.

Exhibit K, certified copy of patent to Pinard, No. 362,396, May 3, 1887.

Exhibit L, certified copy of patent to Walsh, No. 611,876, October 4, 1898.

Exhibit M, certified copy of British patent to Moss, No. 9,058, April 29, 1896.

Exhibit N, Copy of patent to Everett, No. 1,052,807, of February 11, 1913.

Exhibit O, Copy of Smith patent No. 1,038,504, September 10, 1912.

Exhibit P, certified copy of file-wrapper and contents of patent to Smith No. 1,038,504.

Exhibit Q, certified copy of patent to Whitehead, No. 529,987, November 27, 1894.

Exhibit R, certified copy of patent to Andrew, No. 543,762, July 30, 1895.

Exhibit S, certified copy of patent to Escude, No. 731,347, June 16, 1903.

Exhibit T, certified copy of patent to Stitzer, No. 868,029, October 15, 1907.

Exhibit U, certified copy of patent to Stedeker, No. 647,166, April 10, 1900.

Exhibit V, certified copy of patent to Bertram, No. 729,120, May 26, 1903.

Exhibit W, certified copy of patent to Buckley, No. 319,881, June 9, 1885.

Exhibit X, certified copy of patent to Harvey, No. 414,976, November 12, 1889.

Exhibit Y, certified copy of patent to Dunbar, No. 618,851, February 7, 1899.

Exhibit Z, certified copy of patent to Delahunt, No. 573,452, December 22, 1896.

That Defendants' Exhibit K (Pinard patent No. 362,396), Defendants' Exhibit L (Walsh patent No. 611,876), Defendants' Exhibit M (British patent to Moss 9058) and Defendants' Exhibit N (Everett patent No. 1,502,807) were introduced by defendants with particular relation to Smith patent No. 1,379,224. Also that Defendants' Exhibit Q (Smith patent No. 1,038,504) was introduced as prior art to Smith patent No. 1,379,224.

Defendants' Exhibits

That the following exhibits were introduced by defendandants' counsel with special reference to Smith patent No. 1,507,439. Defendants' Exhibit Q (Whitehead patent No. 529,987); Defendants' Exhibit R (Andrew patent No. 543,762); Defendants' Exhibit S (Escude patent No. 731,347); Defendants' Exhibit T (Stitzer patent No. 868,029); Defendants' Exhibit U (Stedeker patent No. 647,166).

That the following exhibits were introduced by defendants' counsel with particular reference to Smith patent No. 1,507,440. Defendants' Exhibit V (Bertram patent No. 729,120); Defendants' Exhibit W (Buckley patent No. 319,881); Defendants Exhibit X (Harvey patent No. 414,976); Defendants' Exhibit Y (Dunbar patent No. 618,851) and Defendants' Exhibit Z (Delahunt patent No. 573,542).

Thereupon defendants rested.

No evidence was offered in rebuttal.

The foregoing is all of the evidence offered, introduced and admitted on behalf of the plaintiff and on behalf of defendants on the trial of this cause.

Approved:

E. Howard M'Caleb,
C. Arthur Anderson,
John E. Sater,
Murray & Zugelter,
Attorneys for Plaintiff.
Paul Bakewell,
J. W. Heintzman,
Wm. E. Hess,
Attorneys for Defendants.

The foregoing narrative Statement of Evidence is approved and allowed, in so far as jurisdiction exists in the District Court to approve and allow the same, this 22nd day of October, 1928.

Smith Hickenlooper,
District Judge.

MEMORANDUM OPINION UPON FINAL SUBMISSION BY JUDGE HICKENLOOPER—Filed June 23, 1928.

The motion to dismiss the bill of complaint as to the individual defendants H. C. Records and G. W. Heintz must be granted. These defendants are not inhabitants of this district nor does it appear that they have committed acts of infringement and have a regular and established place of business here. The motion to dismiss the bill as regards the individual defendants Paul M. Williams and Gerald Brown must be overruled. From the affidavits on file it appears that the defendant Brown, has participated in the alleged infringement by use, by acting as a judge of dog races conducted at the Springdale Amusement Park, within this district, and that he maintained a regular and established place of business at such part as regards said employment. It also appears that the defendant, Paul M. Williams was one of the partners in the maintenance of the Springdale Amusement Park and as such has participated in and contributed to the infringement and has maintained a regular and established place of business, as regards said partnership, at said amusement part. Personal service was made upon Williams and Brown and it is therefore apparent that the Court has personal jurisdiction over said defendants and likewise venue in said action. The admissions made in the affidavits on the motion to dismiss, said affidavits being made by the said defendants Williams and Brown personally, operate in lieu of evidence at the trial and constitute sufficient grounds for holding said defendants.

Coming to the merits of the action, it involves the question of validity and infringement of three patents issued to Owen P. Smith; No. 1,379,224, granted May 24, 1921, for Improvement in Dog Racing Amusements; No. 1,507,440, granted September 2, 1924, for Improvement in Housing for Conveyer Cars and Tracks; and No. 1,507,439, granted September 2, 1924, for Improvement in Starting Cages for Racing Dogs. Each of these patents will be considered separately and in the order above given. As to each patent the defenses are invalidity on the ground of anticipation and lack of invention, and non-infringement due to estoppel arising from the Patent Office proceedings.

Patent No. 1,379,224.

Claims 1 and 2 of this patent are in issue.

Claim 1 provides:

Memorandum Opinion

"In a dog racing amusement, a race course suited for dogs, a casing extending around the outer side of the race course and provided with a longitudinal opening, a mechanical conveyer including a track extending around the race course and located within the casing, and a conveyer car mechanically operated upon said track and provided with an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure, and a wheel rotably mounted on and supporting the arm at the projecting end thereof."

Claim 2 differs from claim 1 only by describing the horizontally extending arm as "hinged to said car" and by providing as one element of the combination "a covered rail track adjacent said course on one side" instead of "a casing extending around the outer side of the race urse".

In order to secure a test of speed for the dogs it had long been known that an artificial lure might be used and that all that was necessary was to carry such artificial lure around the track in advance of the dogs and at their estimated maximum speed. It had also long been known that some means must be provided for preserving the lure from destruction at the end of the race by concealment. This feature is claimed in other claims but is not here involved. Electric motor driven conveyers were also in use for this purpose prior to Smith but he seems to have been the first to realize that the lure could be carried upon the end of a horizontally extending arm without adding fatally to the appearance of artificiality and without detracting the attention of the dogs from such lure. The prior art patents seem to indicate a belief that the lure must be dragged upon the ground by a rope, as in patent to Pinard, No. 362,396, May 3, 1887, or supported by a single vertical rod passing through the slot of an underground tunnel, as in patent to Everett, No. 1,052,807, February 11, 1913, and patent to Smith No. 1,038,504, September 10, 1912. The British patent to Moss, No. 9058, July 4, 1896, occupied a position midway between these two in that the track upon which the lure was propelled was located on the race course proper, an overhead trolly supplied for furnishing electric current, and the lure carried the motor and operated by one wheel upon a single rail, being held in position by flanges at the rail and trolley wire.

The only patent reference in any wise anticipating the patent in suit was the patent to Walsh, No. 611,876,

October 4, 1898. The device of this patent included the electrically propelled conveyer car adjacent the track and separated therefrom by a fence, an artificial lure which dragged upon the track, and a laterally extending arm to which the platform bearing the lure was attached by a rope. While the patent to Walsh disclosed no casing or cover for the conveyer tracks the fence would sufficiently obscure the conveyer from sight of the dogs, and the covering, as a protection from the elements and as preventing short-circuiting of the third rail, would in no way co-operate in a succesful race, or involve invention, but provision for it would seem to constitute mere aggregation. Upon the question of anticipation, therefore, the advances of Smith over Walsh and the only novel conception which might distinguish the two patents was that the laterally extending arm was made horizontal, or nearly so, the conveyer track placed at a level below the race track so that the arm might extend out in close proximity to the ground, and the lure placed directly upon the end of the extending arm instead of being dragged upon the track. Smith does not specifically teach that his principal discovery was that the arm would not detract the attention of the dogs from the lure or that there was any advantage in not dragging the lure upon the track but in supporting it directly upon the outwardly extending arm, and upon this alone, are we of the opinion that there was any advance whatever in the art of coursing or dog racing. The lowering of the level of the conveyer tracks and hence of the fence or partition separating the conveyer from the race course necessarily required the covering or encasing of the conveyer and the tracks so that the dogs might be prevented from jumping upon the track and being injured by the third rail. By this casing the public was also excluded from the tracks. These, however, were mere incidents necessitated by and growing out of the use of the laterally extending arm as support for the lure which constituted the real element of advance over Walsh.

The elements of the combination of the patent in suit were all old but the combination was new. The novel conception of supporting the lure directly upon the outwardly extending arm vitalized the whole device considered as the entirety of the several elements. In assesmbling these old elements in the manner described Smith accomplished a new result in dog racing paraphernalia in that his device was effective, safe for the dogs and the public, avoided any possibility of the supporting platform for the lure turning over (as in Walsh), was eco-

nomical in construction, and was easily inspected and repaired. To this extent we do not believe that Walsh anticipated Smith or that the combination claimed was a mere aggregation. Practically all the elements of the combination co-operated in the final result, the accomplishing of a successful and safe race. It is not necessary that the inventor fully understand the scientific principles underlying his invention or the trend of animal or human psychology and temperament which underlie its success. It is sufficient if the disclosures made possess the elements of novelty and utility.

Although novelty and utility are apparent in the combination of the patent, the question still remains whether in so assembling the elements of his combination patentee disclosed invention or merely the exercise of a high degree of mechanical ability. In other words, having the patent to Walsh before him would the complainant's device naturally occur to one skilled in the particular art? The line of demarcation between mechanical skill and invention is so vague and indefinite that there has been a marked tendency in recent years to attribute invention to those devices which are both new and useful unless they are the obvious results of natural development in the art and would quite manifestly occur to one familiar with the art. Considered in this light we are not prepared to hold the patent invalid for want of invention.

The question of infringement involves a consideration of the patent claims and a consideration of the Patent Office proceedings. Smith was not a pioneer in the invention of dog race track devices in which an artificial lure was provided in lieu of live animals. He was perhaps a pioneer in promoting the construction of dog race tracks as profit-making enterprises but in view of the patent to Walsh and the fact that all his own patents are for improvements only, the form and method of operation of the combination claimed, or the device disclosed, would seem to be of the very essence of the invention. In any event the patent is a very narrow one and the range of equivalents to be allowed the patentee is correspondingly limited. R. S. Sec. 4888 requires that the patentee shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery. This is not a mere idle statutory provision but the claim is the measure of the right to relief. **McClain v. Ortmayer**, 141 U. S. 424; **American Roll Gold Leaf Co. v. W. H. Coe Mfg. Co.**, 212 Fed. 720 (C. C. A. 1.) While the greatest advance and perhaps the true inventive step of the patent in suit con-

sisted of supporting the lure directly upon the extending arm it is apparent that Smith did not realize this In order to provide for the entrance of the lure into a den upon a straight course at the end of the race the device disclosed by Smith passed around the outer side of the race course. If the track was even slightly banked on the curves the lure would perceptibly leave the ground upon such curves and in direct proportion to the angle of banking. This accounts for the voluntary limitation in claim 1 that the casing shall extend around the outer-side of the race course and that the arm shall carry a wheel rotatably mounted thereon and supporting it, implying flexibility, or the hinge at the end attached to the conveyer, and for the similarly descriptive limitation of claim 2 of a horizontally extending arm "hinged to" said conveyer and a wheel rotatably mounted near the end of said arm. To the inventor each of these elements seemed to pertain to the inventive step and to perform a substantial and necessary function which the patentee considered of importance. Viewed in this light the question is one of voluntary limitation rather than estoppel. **D Arcy Spring Co. v. Marshall Ventilated Mattress Co.**, 259 Fed. 236 (C. C. A. 6); **Lakewood Engineering Co. v. Stein et al.**, 8 F (2nd) 713 (C. C. A. 6).

While courts are disposed to give to a patentee full benefit of the true advance made in the art and an adequate range of equivalents which will so protect the patentee (**Winans vs. Denmead**, 15 How. 330; compare **Eibel Process Co. v. Minnesota & Ontario Paper Co.**, 261 U. S. 45, 63; **Dowagiac Mfg. Co. v. Brennan & Co.**, 127 Fed. 143, 147 (C. C. A. 6); **W. W. Sly Mfg. Co. v. Russell & Co.**, 189 Fed. 61 (C. C. A. 6), this doctrine has no application to a patent for an improvement pure and simple where the patentee claims only as his invention or discovery a combination of elements all of which in his opinion are necessary to produce an operable device and of great importance and the substance of his invention. Having so voluntarily limited himself the patentee is entitled to claim infringement only by devices incorporating all the elements of the combination claimed. Here the device of the defendants does not have "a casing extending around the outer side of the race course" or a "wheel rotatably mounted on the extending arm and supporting such arm", within the language of claim 1, nor "an extending arm hinged to the conveyer and a wheel rotatably mounted near the end of said arm", within the language of claim 2.

But even if within the otherwise normal range of equivalents we are of the opinion that the patentee has estopped himself in the Patent Office proceedings to claim such equivalents. The original application for patent contained the following claim:

> "3. In an amusement, the combination of a race track suited for dogs, a covered rail track adjacent said course, a conveyer car mechanically operated upon said track, **an arm attached to said car extending midway of said course**, a wheel rotatably mounted on said arm, **and a lure mounted on said arm.**"

This claim was rejected on references to Walsh and was amended by adding at the end:

> "and a casing extending around the race course and receiving and concealing the track and the conveyer car and provided with a longitudinal opening through which the said arm extends."

The claim as amended was again rejected "on either Walsh or Moss both of record. Moss is provided with a housing and it would not be invention to provide Walsh with one". The claim was then amended to read as, and became, claim 1 of the patent as issued. It was not pointed out to the examiner that there was any invention in supporting the lure upon the outwardly extending arm and in so acquiescing in the rulings of the Patent Office and after abandoning the broad claim and substituting a claim to a specific structure only, the patentee "may not by construction, or by resort to the doctrine of equivalents, give to the claim the larger scope which it might have had without the amendments which amount to a disclaimer". **I. T. S. Rubber Co. v. Essex Rubber Co.**, 279 U. S. 429, 444; **Weber Electric Co. v. Freeman Electric Co.**, 256 U. S. 668,677. Not only do such Patent Office proceedings make form and structure of the essence of the inventive step but an estoppel is also raised against the patentee from claiming by resort to the doctrine of equivalents that the claim as allowed has the same breadth and scope as the rejected claim. As said by the Supreme Court in the I. T. S. Rubber Company case, to permit this would render nugatory the specific limitation" upon which the claim was granted. If dissatisfied with the ruling of the Patent Office the applicant's remedy was by an appeal. Having limited and narrowed his claim he is bound by it.

We are aware that this view was not followed by the District Court for the Eastern District of Louisiana (**Smith v. American Electric Rabbit Racing Association, Inc., et al.** 21 F. (2nd) 366) but apparently the questions of voluntary limitation and estoppel by Patent Office proceedings were not raised at that trial nor otherwise called to the attention of the court. Neither of the above cases last cited are referred to by the Court and the opinion seemingly rests upon the doctrine of **Winans v. Denmead, supra,** and related cases. This opinion of the District Court was affirmed by the Circuit Court of Appeals for the Fifth Circuit but in an opinion saying only that the patents in suit and infringing devices are fully described in the opinion of the District Court and need not be repeated, and that "we agree with the conclusions of the District Court". The latter opinion is not helpful upon the point here considered. Notwithstanding our high regard for the learned District Judge for the Eastern District of Louisiana and for the opinions of the Circuit Court of Appeals for the Fifth Circuit, we are unable to concur in the decisions so rendered.

The alleged infringing device of the defendants having entirely omitted from the combination the elements included in the limitation and estoppel, we are constrained to held that infringement has not been shown.

PATENT NO. 1,507,440.

This patent is for a housing for cars and tracks of the conveyer. The device shown in this patent would seem to possess neither the elements of novelty nor invention. Entirely apart from anticipation by prior patent the invention would seem to be anticipated by such structures in common use as the well-known housing for the third rail on electric railways, the covering for loading platforms adjacent freight railway tracks at large industrial plants, or even the canopies at entrances to hotels, theatres or residences. Assuming the desire to house, the construction of such housing was a mere question of mechanical skill not justifying separate patent therefor whether termed the housing, casing or roofing. It was devised and constructed solely by application of known principles of truss and cantilever structures. Except as an old element forming part of a new combination in race track amusements no invention is apparent in the disclosures made. The drafting of the claims with specific reference to housing for covering tracks and

cars having laterally extending arms is but the designation of a specific and possibly new use for a common and well-known structure.

Not only is the device of this patent anticipated by many ordinary structures but it is also anticipated by the patent to Bertram, No. 729,120, May 26, 1903. The mere fact that the motor in the Bertram patent is outside the casing and the third rail alone enclosed, would seem insufficient to distinguish the reference from the Smith patent insofar as a patentable casing itself or article patent is concerned.

Reference to the Patent Office proceedings also discloses the abandonment of any claim not incorporating the element of the adjustable truss or stay rods. Original claims 1, 3 and 4, even as amended, omitted the element of this adjustable truss rod, were rejected upon reference to Bertram, and were then amended so as to include this element, which was apparently the only advance in the art. Bertram showed one type of construction for an identically shaped casing; the patent to Smith No. 1,379,224 shows another type of construction; and the device used by the defendants herein shows still another. Under the doctrines of limitation and estoppel discussed with reference to the Smith patent No. 1,379,224, the patentee must be held to a monopolistic right only in the specific manner of construction shown. As so limited, the device of the defendants clearly does not infringe.

PATENT NO. 1,507,439.

This patent relates to a starting cage for racing dogs in which the single claim is:

> "In a starting cage for racing dogs, a frame comprising a box-like structure divided into a plurality of compartments and comprising walls formed of wire mesh partially covered with fabric, individual rear doors for each of the compartments and a single front door hinged at its upper end to the top walls of the frame, divergent inclined members secured to the top of the said frame, and extending upwardly and outwardly beyond the fact of the front door and having their outer ends in the plane of the side walls of the box-like structure, springs secured to the outer ends of said inclined members and to the door and lying in the plane of the hinges, and a latch at the bottom of the cage for coaction with the lower edge of the front door to hold the front door normally

closed against the tension of said springs, said springs adapted to raise the front door upon release of the latch."

The elements of the alleged invention were therefore a box-like structure divided into a plurality of compartments, the walls of which were formed of wire mesh partially covered with fabric, individual rear doors for each compartment, and a single front door which might be raised, thus simultaneously opening all compartments forwardly. This single front door is raised upwardly and outwardly by springs upon the release of the latch, which springs are held in place by divergent inclined members. In the Patent Office proceedings the elements which apparently impressed the patentee as constituting his invention were (1) the wire mesh partially covered with fabric, and (2) the divergent inclined members supporting the springs. While devised with particular reference to horse racing, the patent to Escude, No. 731,347, June 16, 1903, provided the upwardly and outwardly swinging, unitary front door; and all claims of the original application having been rejected on patents to Whitehead, No. 529,987, November 27, 1894; Andrew, No. 543,762, July 30, 1895; Stitzer, No. 878,029, October 15, 1907; Stedeker, No. 647,166, April 10, 1900; and Escude, No. 731,347, June 16, 1903, the applicant amended by emphasizing these divergent inclined members extending beyond the face of the cage, saying:

"None of the references show the divergent inclined members having their outer edges in vertical alignment with the side walls of the box-like structure. A material advantage is gained by this structure in view of the fact that the springs being connected to these outer ends lie in the same plane as the hinge members by means of which the door is secured to the frame. This provides for a direct action of the springs the moment the latch is released."

This claim was again rejected upon Andrew and Stitzer, "in view of Escude, which suggests the 'single front door', springs and latch". The applicant again resorted to amendment by cancelling the claim and inserting a new claim for the element "a frame comprising a box-like structure divided into a plurality of compartments and comprising walls formed of wire mesh partially covered by fabric," etc. The claim was again rejected as

not supported by the original disclosure and a new amendment was made specifically stating that the front door was provided with a latch. As ultimately amended the claim was allowed.

It is now contended that the patents for horse starting devices have but little or no application to devices for the starting of dog races but the complainant would seem estopped to now raise this issue in view of the acceptance of such references without objection in the Patent Office. As repeatedly amended to avoid references in the prior art, it is manifest that the claim can be given but narrow construction and only those combinations which include all of the elements would infringe. The case is not one of showing the preferred form but is one of limitation of the scope of the invention by the prior art and Patent Office proceedings and by the estoppel arising from such proceedings. So construed, if there by any invention in the patent it must consist either in some supposed advantage in the use of wire mesh and the divergent arms supporting the springs, or in the combination of these elements with a single exit door as distinguished from separate doors simultaneously opening; or perhaps in the single exit door opening outwardly and upwardly in combination with such other elements. Such outwardly and upwardly opening exit door is shown in the patent to Escude and probably in the patent to Stedeker. A barrier which is released by outward and upward movement, but unassociated with separate stalls or compartment, is in common use at probably all horse racing tracks.

In view of the prior art starting devices having all the elements of separate compartments, separate rear doors and a single exit door opening upwardly and outwardly, and especially in view of the limitation and estoppel arising in the Patent Office, the choice of divergent spring supports and wire mesh partitions would seem to lie solely within the domain of section of mechanical means and structural material. Invention does not seem to be disclosed by the combination of these several elements nor by the use of the devices of horse racing in dog racing for which they are peculiarly suited. But if the invention appears at all, and the patentee is limited to the specific structure shown, the patent is of very narrow scope and as such is not infringed by the defendant's cage which omits the wire partitions covered with fabric, the divergent inclined spring supports and apparently the springs themselves (see Defendants' Exhibits E and F). In lieu of springs the single front door

is opened manually with the assistance of counter weights. By reason of the omission of these several elements of the combination we are constrained to hold that this patent is not infringed.

Upon all patents a decree may be prepared dismissing the bill of complaint for want of infringement.

We have the less regret at this outcome because the court cannot fail to take judicial notice of the fact that these dog races are not conducted in the spirit of sportsmanship but almost exclusively as gambling means. The sport, so-called, appeals almost exclusively to the gambler and not to the sportsman or dog fancier. The most undesirable type of citizen is attracted and catered to, and not the sportsman who derives pleasure in seeing a test of speed. Knowing this to be the fact, a court of equity is here asked to lend its aid in securing for complaint a share in the spoils of such enterprise. The entire enterprise being unconscionable, a court of equity should not order an accounting of profits made, even if infringement existed. It is not a case of a possible misuse of an innocent device but of the patentee taking out his patent and promoting the enterprises established under it solely or primarily, at least, as gambling establishments. While a substantial good would come to the community by the injunction alone, the accounting could not in any event be ordered.

June 23/28

Smith Hickenlooper,
District Judge.

For Complainant: Hon. John E. Sater, Columbus, Ohio;
E. Howard M'Caleb, New Orleans, La.

For Defendants: Paul Bakewell, St. Louis, Mo.
J. W. Heintzman and
William E. Hess, Cincinnati, Ohio.

DECREE—Filed July 10, 1928.

This cause having been brought to a final hearing upon the pleadings and proofs and counsel for the respective parties having been heard, the cause having been considered by the court and its opinion having been filed therein on June 23, 1928, it is hereby ordered, adjudged and decreed as follows:

First: The individual defendants, H. C. Records and G. W. Heints, are dismissed, for the reason that neither of them are inhabitants of this district, or have a regular and established place of business therein, or have committed any act of infringement of any of the claims of the patents in litigation. The motion to dismiss the bill as to the individual defendants, Paul M. Williams and Gerald Brown, is overruled. The only defendants over whom this court has jurisdiction are the said Williams, Brown, and Springdale Amusement Park, Limited.

Second: Claims one and two of patent No. 1,379,224, issued May 24, 1921, to Owen P. Smith, being the claims of such patent on which complainant elected to stand in the hearing of this cause, are valid, but are not infringed by any of the defendants before the court.

Third: Patent No. 1,507,439, issued to the said Owen P. Smith, dated September 2, 1924, and sued on as to its only claim, is valid, but not infringed by said defendants or any of them.

Fourth: Patent No. 1,507,440, issued September 2, 1924, to the said Owen P. Smith, is not valid for want of novelty and invention and involves only mechanical skill; but if valid, is not infringed by the defendants or any of them.

Fifth: The bill of complaint herein is dismissed at the costs of complainant.

The complainant excepts to such order, judgment and decree and to each and every part thereof, and gives notice of her intention to appeal therefrom.

ORDER OF DESIGNATION—Filed August 4, 1928.

It appearing that both of the District Judges for the Southern District of Ohio are absent from the district and that, for the preservation of the rights of the above named plaintiff, Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, who desires to appeal this cause to the United States Circuit Court of Appeals for the Sixth Judicial Circuit, her appeal must be allowed before either of said Judges will probably return to said District in order to comply with the statutory requirements relating to the perfecting of an appeal, therefore the Honorable Maurice H. Donahue is hereby designated and appointed to hold the District Court of the United States for said Southern District of Ohio in aid of the District Judges thereof in the matter of all things pertaining to the perfecting of the said plaintiff's appeal, it having been made to appear to the undersigned, one of the Circuit Judges of said Federal Judicial Circuit, now present in the Circuit, that the interests of said plaintiff and the public require such designation, the circumstances evidencing such requirement being satisfactorily shown to the undersigned.

(Signed) Maurice H. Donahue,
Circuit Judge of the Sixth United States Judicial Circuit.

Dated at Columbus, Ohio,
August 4, 1928.

ORDER ALLOWING APPEAL—Filed August 4, 1928.

This day came the plaintiff and presented to the court her petition for her appeal from the order and decree of this court to the United States Circuit Court of Appeals for the Sixth Circuit, and prays that such appeal may be allowed, whereupon the plaintiff's claim of appeal is al-

Order Allowing Appeal

lowed; and the appeal bond to be given by her is fixed at the sum of $500.00, such bond to be approved by the Clerk of the Court.

Maurice H. Donahue;
Sitting as District Judge by designation.

PETITION FOR APPEAL—Filed August 4, 1928.

The above named plaintiff, Hannah M. Smith, Administratrix of the estate of Owen P. Smith, conceiving herself aggrieved by the decree made and entered on the 10th day of July, 1928, in the above entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Sixth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith, and she prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the sixth judicial circuit.

E. Howard M'Caleb,
C. Arthur Anderson,
Murray & Zugelter,
J. E. Sater,
Solicitors for Plaintiff.

ASSIGNMENT OF ERRORS—Filed August 4, 1928.

On this 4th day of August 1928, came the above named plaintiff by her solicitors and files this her assignment of errors in and to be the decree entered by the above mentioned Court on the 10th day of July, A. D. 1928, and in the record and proceedings in the above entitled cause, and further avers and alleges the fact to be that there is manifest error in said decree, record and proceedings, harmful to the plaintiff herein and against her just rights, in the following particulars and for the following reasons, to-wit:

(1) The District Court erred in holding and deciding that the only novel conception in the Smith patent No. 1,379,224 and especially in each of the Claims 1 and 2 thereof, over the prior art and especially over the Walsh patent No. 611,876, dated October 4, 1898, consists in making the laterally extending arm horizontal or nearly so, in placing the conveyer track at a level below the race track so that the arm might extend out in close proximity to the ground, and in placing the lure directly upon the end of the extending arm instead of its being dragged upon the track.

(2) The District Court erred in holding and deciding that all of the elements of the combination of said Smith patent No. 1,379,224 and especially all of the elements in each of Claims 1 and 2 of said patent were old, and that it was the mere assembling of old elements in the manner described in said patent and especially in said Claims 1 and 2 respectively that enabled the patentee Smith to accomplish a new result in dog racing paraphernalia and to render his device efficient, practicable and successful.

(3) The District Court erred in holding and deciding that the only novel conception in said patent No. 1,379,224 and in each of said Claims 1 and 2 respectively was the supporting of the lure directly upon the outwardly extending arm.

(4) The District Court erred in holding and deciding that Smith was neither a pioneer in the invention nor a real inventor of dog racing track devices in which an artificial lure was provided in lieu of live animals and in further holding that each and all of his patents are for improvements only.

(5) The District Court erred in holding and deciding that said patent No. 1,379,224 and especially that each of claims 1 and 2 thereof respectively are narrow or "very narrow" and that the range of equivalents to be allowed the patentee is correspondingly limited.

Assignment of Errors

(6) The District Court erred in holding and deciding that the patentee Smith so limited himself in each of the Claims 1 and 2 respectively of patent No. 1,379,224, as to be entitled to claim infringement only by devices incorporating all of the elements found in each of such combination claims.

(7) The District Court erred in holding and deciding that the casing extending around the outer side of the defendants' race track is not the equivalent of that shown in Claims 1 and 2 of said patent No. 1,379,224, and in holding and deciding that the extending arm used by defendants on their device is not the equivalent of the extending arm of the Smith patent called for in said Claims 1 and 2 respectively, having a wheel rotatably mounted thereon and supporting such arm, and having such arm hinged to the conveyer with the rotatably mounted wheel near the end thereof.

(8) The District Court erred in holding and deciding that the patentee Smith estopped himself by the proceedings in the Patent Office as shown by the file wrapper of said patent No. 1,379,224, to claim a range of equivalents broad enough for the protection of the plaintiff against the device employed by defendants in dog racing.

(9) The District Court erred in holding and deciding that the device of the defendants does not infringe said patent No. 1,379,224 or either of the claims 1 and 2 of such patent.

(10) The District Court erred in holding and deciding that complainant's patent No. 1,507,440 is invalid and that none of the claims of said patent possess either novelty or invention.

(11) The District Court erred in holding and deciding that said patent No. 1,507,440 is anticipated in and by the prior art.

(12) The District Court erred in holding and deciding that the only advance in the art made by the patentee Smith, as regards said patent No. 1,507,440, is the incorporation in each of the elements of said claims of adjustable truss or stay rods.

(13) The District Court erred in holding and deciding that the sole claim in the Smith patent No. 1,507,439 can be given but a narrow construction that only those combinations which include all of the elements of such claim infringe the same.

(14) The District Court erred in holding and deciding;

(a) That the only elements in said patent No. 1,507,-

439 constituting invention are the wire mesh partially covered by fabric and the divergent inclined members supporting the springs;

(b) That invention, if any, in said patent must consist either in some supposed advantage in the uses of the wire mesh and the divergent arms supporting the springs, or in the combination of these elements with a single exit door as distinguished from separate doors simultaneously opening, or perhaps in the single exit door opening outwardly and upwardly in combination with such other elements; and

(c) The plaintiff's said patent is not infringed by the defendants' cage which omits the wire partitions covered with fabric, the divergent inclined spring supports, and apparently the springs themselves.

(15) The District Court erred in holding and deciding that the prior art as to horse racing devices is applicable to or may be invoked as anticipatory of devices or cages for the starting of dog races.

(16) The District Court erred in holding and deciding that the rule of equivalents has no application whatsoever to the Smith patent No. 1,507,439, or to the claim therein set forth.

(17) The District Court erred in holding and deciding that complainant's patent No. 1,507,439 is not infringed by the starting cage employed by the defendants in their device.

Wherefore, the plaintiff prays that the foregoing assignment of errors and that each of such errors be sustained, that the said judgment and decree of the District Court be reversed, and that the District Court be instructed to enter a decree in accordance with the prayer of the plaintiff's bill.

E. Howard M'Caleb,
C. Arthur Anderson,
Murray & Zugelter,
J. E. Sater,
Attorneys for Plaintiff.

BOND ON APPEAL—Filed August 4, 1928.

Know All Men By These Presents: That we, Hannah M. Smith, Administratrix of the estate of Owen P. Smith, as principal, and the Great American Indemnity Company of New York, as surety, are held and firmly bound unto Springdale Amusement Park, Limited, Paul M. Williams, H. C. Records, G. W. Heintz and Gerald Brown, in the full and just sum of Five Hundred Dollars, to be paid to the said Springdale Amusement Park, Limited, Paul M. Williams, H. C. Records, C. W. Heintz and Gerald Brown, their certain attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 4th day of August in the year of our Lord one thousand nine hundred and twenty-eight.

Whereas, lately in the District Court of the United States for the southern district of Ohio, western division, in a suit depending in said court between said Hannah M. Smith, Administratrix of the estate of Owen P. Smith plaintiff, and Springdale Amusement Park, Limited, Paul M. Williams, H. C. Records, G. W. Heintz and Gerald Brown, defendants, a decree was rendered against the said Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, and the said Hannah M. Smith, Administratrix as aforesaid, having obtained an appeal and filed a copy thereof in the Clerks' office of said Court, to reverse the decree in the aforesaid suit, and a citation directed to the said Springdale Amusement Park, Limited, Paul M. Williams, H. C. Records, G. W. Heintz and Gerald Brown, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the sixth circuit, to be holden at the city of Cincinnati in said circuit on the 2nd day of October next;

Now, Therefore, the condition of the above obligation is such that if the said Hannah M. Smith, Administratrix of the estate of Owen P. Smith shall prosecute her appeal to effect, and answer all damages and costs if she

Bond on Appeal

fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

Hannah M. Smith, Administratrix
of the Estate of Owen P. Smith,
By J. S. Sater, her attorney in fact,
As Principal.

Great American Indemnity Company
of New York,
By Frank J. Macklin, Attorney-in-
fact,
As Surety.
(Seal)

Sealed and delivered in the presence of us:
L. M. Baker,
Kenneth L. Sater,

Approved by Harry F. Rabe, Clerk,
of United States District Court, Southern
District of Ohio.

ORDER—Filed August 4, 1928.

It appearing to the undersigned, sitting by designation in the United States District Court for the Southern District of Ohio by reason of the absence of both of the District Judges therefrom, that the transcript of the evidence and proceedings had in said District Court in the above entitled cause is quite voluminous, that the plaintiff's counsel have not had sufficient time to reduce the same to the narrative form, that after it has been so reduced the same will be subject to the approval of defendants' counsel, that the leading active counsel of the defendants resides in St. Louis, Missouri, and that considerable time must elapse before the said record can be reduced to the narrative form, approved, and filed,

Order

It is hereby ordered that the time for the filing of the same in the narrative form and time for filing record in Court of Appeals be extended to Oct. 1, 1928.

(Signed) Maurice H. Donahue,
Sitting as District Judge by designation.

EXTENSION OF TIME FOR FILING PRINTED TRANSCRIPT—Filed August 13, 1928.

The time for filing the narrative statement herein, having been extended to October 1, 1928, it is ordered that the time for filing the printed transcript of record in the Circuit Court of Appeals be extended to November 1, 1928.

Hickenlooper, District Judge.

CITATION—Filed August 4, 1928.

United States of America,
Sixth Judicial Circuit. } ss.

To Springdale Amusement Park, Limited, Paul M. Williams, H. C. Records, G. W. Heintz and Gerald Brown: Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of

Citation

Appeals for the Sixth Circuit, to be holden at the City of Cincinnati, in said Circuit, within thirty days from the date hereof, pursuant to an appeal, filed in the Clerk's office of the District Court of the United States for the Southern District of Ohio, wherein Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, is appellant and you are appellee.., to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this fourth day of August, in the year of our Lord one thousand nine hundred and twenty-eight, and of the Independence of the United States of America the one hundred and fifty-third.

(Signed) Maurice H. Donahue,
Sitting as District Judge by designation.

(Duly verified)

Service of the above Citation acknowledged this 4th day of August 1928. J. W. Heintzman,
Attorney for Defendant.

PRAECIPE

To The Clerk:

You are requested to take a transcript of record, to be filed in the United States Circuit Court of Appeals for the Sixth Judicial Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following and no other papers or exhibits, to-wit:

1. Bill of complaint.
2. Motion for preliminary injunction.

Praecipe

3. Return of August 23, 1927, by United States Marshal.
3A. Affidavits for plaintiff in support of motion for preliminary injunction.
4. Entry allowing amendment to bill of complaint.
5. Amendment to bill of complaint.
6. Order for hearing at Steubenville, Ohio.
7. Affidavit of Gerald Brown.
8. Special motion by Paul M. Williams to dismiss bill of complaint.
9. Special motion by Gerald Brown to dismiss bill of complaint.
9A. Special motion of defendant George W. Heintz and affidavit of George W. Heintz.
10. Affidavit of Paul W. Williams.
11. Order extending time to plead.
12. Separate answer of Springdale Amusement Park, Limited.
13. Interrogatories of defendant, Springdale Amusement Park, Ltd.
14. Entry correcting answer.
15. Motion of Springdale Amusement Park, Limited, to dismiss bill of complaint.
16. Order overruling motion to dismiss bill of complaint.
17. Answers to interrogatories.
18. Reply to answer of Springdale Amusement Park, Ltd.
19. Stipulation for use of printed or photostatic patent office copies in lieu of original or duly certified copies of exhibits.
20. Statement of evidence.
21. Exhibits.
22. Opinion of Judge Hickenlooper.
23. Decree.
24. Order of designation.
25. Order allowing appeal.
26. Petition for appeal.
27. Assignment of errors.
28. Bond for appeal.
29. Order extending time to file narrative form of record.
30. Order extending time to file printed record to November 1, 1928.
31. Citation to appellees and entry of appearance.

You are also requested to make a certificate in the following form:

Praecipe

I, ...Clerk of the United States District Court for the Southern District of Ohio, Western Division, do hereby certify that the foregoing transcript of record is a full, complete and accurate transcript of so much of the record of this case as is herein requested by the appellant to be incorporated in the record on appeal in this cause. In Testimony whereof, I have hereunto set my hand and have affixed the seal of this Court, on the....day of.....1928.

.....

Clerk of said District Court.

The requests above made are respectfully submitted on behalf of the plaintiff.

E. Howard McCaleb,
Murray and Zugelter,
C. Arthur Anderson,
J. E. Slater,
Attorneys for plaintiff.

NOTICE OF LODGING STATEMENT OF EVIDENCE, PRAECIPE, &c.

To Messrs. J. W. Heintzman, Paul Bakewell and William Hess:

Please be informed that the plaintiff has prepared a statement of evidence and has this 28th day of September, 1928, lodged it in the Clerk's office for your examination. Plaintiff has at the same time filed with the Clerk a praecipe, of which a copy is herewith enclosed for you, indicating the portions of the record to be incorporated in the transcript on her appeal. The Court will be asked by plaintiff to approve the statement on the 10th day of

Notice of Lodging Statement of Evidence, etc.

October, 1928, at 9:30 o'clock A. M., or as soon thereafter as counsel can be heard.

E. Howard McCaleb,
Murray & Zugelter,
C. Arthur Anderson,
J. E. Sater,
Solicitors for Plaintiff.

Notice of above acknowledged this 28th day of September 1928.

J. W. Heirtzman,
W. E. Hess,
Per Ferd Zuenkeler.

CERTIFICATE OF CLERK.

I, Harry F. Rabe, Clerk of the United States District Court for the Southern District of Ohio, Western Division, do hereby certify that the foregoing transcript of record is a full, complete and accurate transcript of so much of the record of this case as is herein requested by the appellant to be incorporated in the record on appeal in this cause. In Testimony Whereof, I have hereunto set my hand and have affixed the seal of this Court, on the —— day of ————————, 1928.

(Seal)

Clerk of said District Court.

PLAINTIFF'S EXHIBIT 1.

LETTERS OF ADMINISTRATION.
IN COURT OF COUNTY JUDGE, STATE OF FLORIDA

Estate of
Owen P. Smith
Deceased } Dade County
#3756

To All to Whom These Presents Shall Come, Greeting:

Whereas, Owen P. Smith deceased, late of this County, died intestate, having while he lived and at the time of his death, divers goods, chattels and credits within the County aforesaid, by means whereof the full disposition and power of granting the administration of all and singular the goods, chattels and credits of the said deceased, and also a final dismission from the same to the County Judge aforesaid does of right belong:

Now, Know ye, that I, W. F. Blanton County Judge for the County aforesaid, desiring that the goods, chattels and credits of said deceased may be well and truly administered and legally disposed of, do hereby grant unto Hannah M. Smith Administratrix full power by the tenor of these presents to administer the goods, chattels and credits of said deceased, which to him in his lifetime and at the time of his death did belong, and to ask, demand, sue for, recover and receive the same, and to pay the debts in which the deceased stood bound, so far as his assets will extend, according to law, and then the balance to pay over to the legal heirs and distributees of said deceased. And the said Hannah M. Smith Administratrix having given bond and security and taken oath, and performed all other requisites required by law necessary to her just qualifications as Administratrix is, by order of this Court and by virtue of these presents, ordained constituted and appointed Administratrix of all the goods, chattels and credits of said Owen P. Smith deceased.

Witness, my name as Judge aforesaid, and seal of office, this 21st day of January in the year of our Lord one thousand nine hundred and twenty-seven at Miami, Dade County aforesaid.

(C. J. Seal)

W. F. Blanton,
County Judge.

Plaintiff's Exhibit 1

State of Florida }
Dade County }

Be It Remembered, That on this .....day of .....19... I duly recorded the foregoing Letters of Administration in the public records of said County.

.....
County Judge.

By.....
Clerk.

(Endorsed on back.)

#3756

In County Judge's Court
Dade County, Florida.

Estate of
Owen P. Smith
Deceased

Letters of Administration
To
Hannah M. Smith

Filed Jan 21 1927 and duly recorded and verified in Book 13, page 404 Record of Administration.

W. F. Blanton
County Judge.
By Jean H. Thompson
Clerk.

CERTIFICATE

I, Jean H. Thompson, Clerk of the County Judge's Court in and for the County of Dade and State of Florida, do hereby certify that the above and foregoing is a true and correct copy of Letters Testamentary issued to Hannah M. Smith, Administratrix, in re Estate of Owen P. Smith, Deceased, late of Dade County, State of Florida, as the same remain on file and record in this court.

And I further certify that said Letters Testamentary are in full force and effect.

Plaintiff's Exhibit 1

In Witness Whereof I have hereunto set my hand and the official Seal of said Court at Miami, Florida, this 12th day of August, 1927.

(Seal)

Jean H. Thompson,
Clerk County Judge's Court.

(Endorsed on back.)

#3756

State of Florida
County of Dade

County Judge's Court

In the matter of the estate of:
Owen P. Smith
Deceased.

Certified Copy

Letters Testamentary

State of Florida
County of Dade } County Judge's Court

I, W. F. Blanton, County Judge and sole presiding Judge of the County Judge's Court, do hereby certify that Jean H. Thompson, whose name is subscribed to the foregoing certificate was at the time of signing and sealing the same, Clerk of the County Judge's Court of Dade County, aforesaid, duly appointed and qualified to office. And that full faith and credit are and are of right should be given to all his official acts as such, in all courts of record and elsewhere and that his attestation is in due form of law and by the proper officer.

Given under my hand and official seal this 12th day of August A. D. 1927.

W. F. Blanton,
Judge of the County Judge's Court.

State of Florida
County of Dade } County Judge's Court.

I, Jean H. Thompson, Clerk of the County Judge's Court in and for Dade County, Florida, do hereby certify that W. F. Blanton, whose signature is appended to the foregoing certificate was at the time of signing the same, County Judge and sole Presiding Judge of the

Plaintiff's Exhibit 1

County Judge's Court in and for said County, duly commissioned and qualified; and that full faith and credit are and of right should be given to all his official acts as such in all courts of record and elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Miami, Dade County, Florida, this 12th day of August, A. D. 1927.

Jean H. Thompson,
Clerk of the County Judge's Court.

(Endorsed on back.)

#3756

State of Florida
County of Dade

County Judges Court

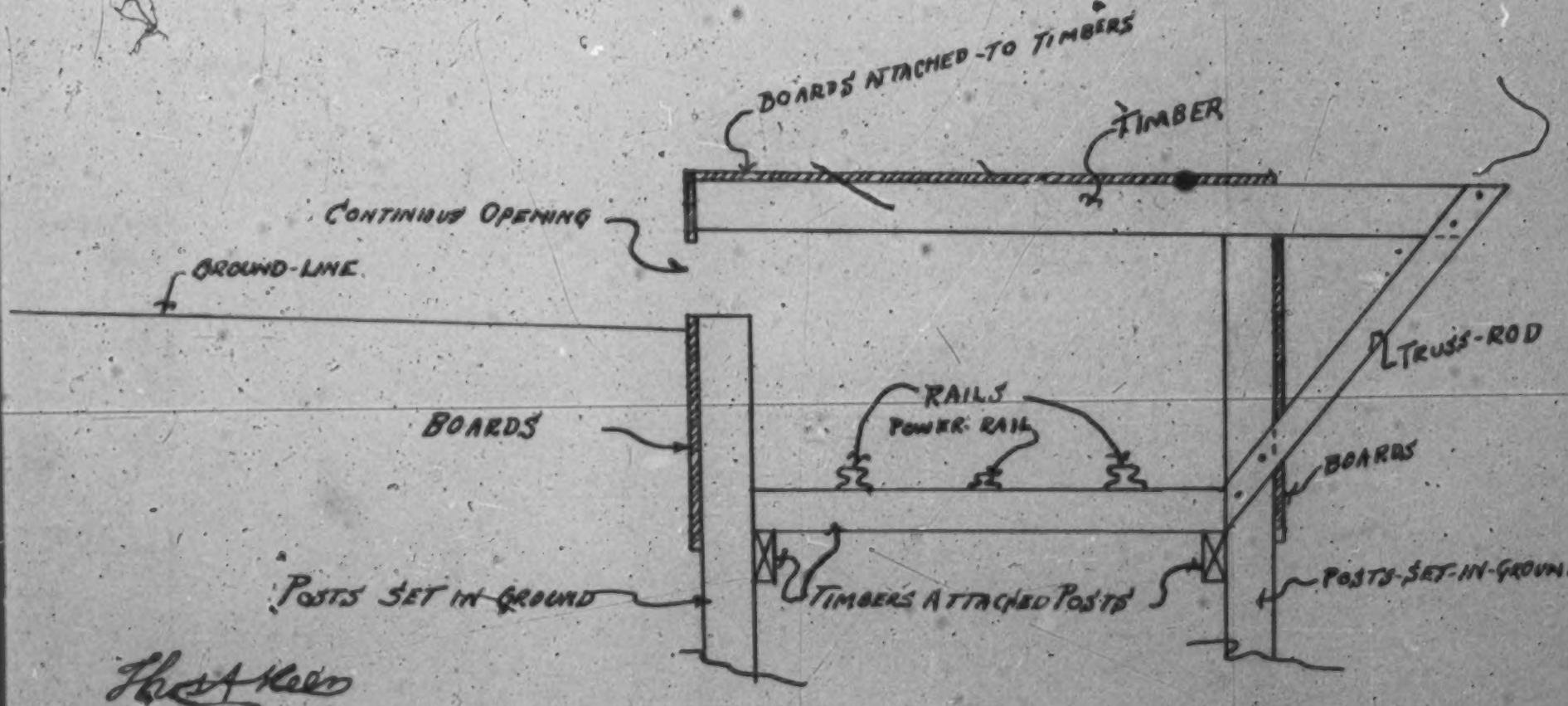
In the Matter of the Estate of
Owen P. Smith
Deceased

Exemplified Copy

Letters of Administration

PLAINTIFF'S EXHIBIT No. 5

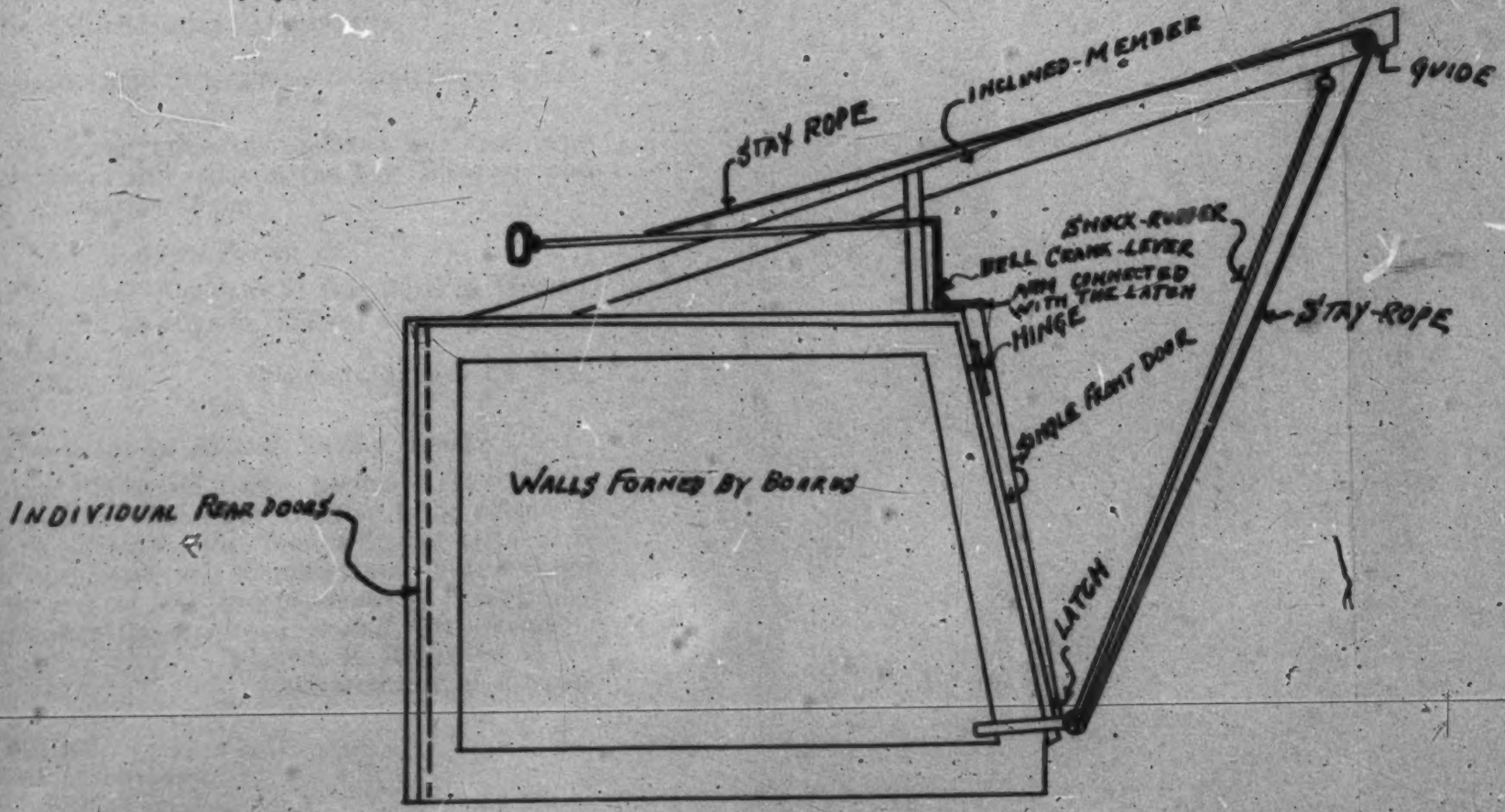
CROSS SECTION HOUSING - SPRINGDALE AMUSEMENT PARK LIMITED



Thos A Kelly

PLAINTIFF'S EXHIBIT "6"

CROSS SECTION STARTING CAGE FOR RACING DOGS USED AT SPRINGDALE AMUSEMENT PARK LIMITED



Thos. A. Keen

PLAINTIFF'S EXHIBIT 7.

390

DEPARTMENT OF COMMERCE
United States Patent Office

To all persons to whom these presents shall come, Greeting:

This Is To Certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the

Letters Patent of

William C. Creveling, Assignor of One-third to William W. Finn, One-third to John O. Talbott and One-sixth to Agnes Creveling,
Number 1,481,313, Granted January 22, 1924,
for

Improvement in Animal Racing Tracks.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this fourth day of October in the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States of America the one hundred and fifty-second.

(Seal) Thomas E. Robertson,
Commissioner of Patents.

Attest:
D. E. Wilson,
Chief of Division.

Plaintiff's Exhibit 7

46
| Jarboe
73

Number (Series of 1915).
525538 (Ex'r's Book) 135-195
Div. ~~24~~ 7 Patent No. 1481313
Jan. 22, 1924

Name William C. Creveling Assor. of 1/3 to William W. Finn of San Diego, Calif., 1/3 to John O. Talbott, of Denver, Colo. and 1/6 to Agnes Creveling, of Los Angeles, Calif.
of Los Angeles
County of .....
State of California
Invention Animal Racing Tracks.

PARTS OF APPLICATION FILED	Original	Renewed
Petition	Dec. 29, 1921	....., 192
Affidavit	" ", 1921	....., 192
Specification	" ", 1921	....., 192
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First Fee $15	Dec. 29, 1921	....., 192
Appl. filed complete	Dec. 29, 1921	....., 192
Examined and Passed for Issue	June 20, 1923	....., 192
C. C. Jarboe,	Exr. Div. 7	.....Exr. Div.....
Notice of Allowance	June 22, 1923 By Commissioner.	....., 192 By Commissioner.
Final Fee $20	Dec. 22, 1923	Jan 22 1924 , 192
Patented		, 192

Division of App. No. ..... filed ....., 19.....

Attorney ~~Hasard & Miller, 506 Central Bldg.~~
~~Los Angeles, Cal.~~
~~Associate~~ Attorney Wiedersheim & Fairbanks, 1232 Chestnut St. Philadelphia, Pa.
(No. of Claims Allowed 9) Print Claims 1 in O. G. (Cl. 46-73)
Title as Allowed Animal Racing Track

Plaintiff's Exhibit 7

$15 Rec'd
Dec 29 1921
C. C. U. S. Pat. Office

$25,538

PETITION
And Power of Attorney

To the Commissioner of Patents:

Your Petitioner, William C. Creveling, a citizen of the United States, a resident of Los Angeles, County of Los Angeles, State of California, Whose post-office address is Westminster Hotel, 4th and Main Sts., Los Angeles, California, prays that letters patent may be granted to him for the improvement in Animal Racing Tracks set forth in the annexed specification; and he hereby appoints the firm of Hazard & Miller, whose register number of 10478, composed of the surviving member ~~following members: Henry T. Hazard and~~ Herman Miller of 506 Central Building, Los Angeles, California, his attorneys with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent and to transact all business in the Patent Office connected therewith.

Signed at Los Angeles in the County of Los Angeles and State of California this 19th day of December 1921.

William C. Creveling.

U. S. 25c I. R. Documentary Stamp.

SPECIFICATION:

To All Whom It May Concern:

Be it known that

I, William C. Creveling, a citizen of the United States, residing at Los Angeles, in the County of Los Angeles and State of California, have invented new and useful improvements in

Animal Racing Tracks,

of which the following is a specification:

My invention relates to animal racing apparatus of that character in which dogs or other like animals are induced to race about a track by means of a lure or object conveyed mechanically along the track.

A purpose of my invention is the provision of a racing apparatus of the above described character in-

cluding a lure conveying car which is movable over a conveyor track arranged within the area defined by the race track to permit of the forming of endless race and conveyor tracks so that the animals can be induced to traverse the entire race track one or more times.

It is also a purpose of my invention to provide a racing apparatus in which the lure conveying car is so constructed as to insure of its easy and unrestricted movement over the conveyor track, and one which includes a lure sustaining arm and means co-operating therewith for automatically causing a retraction of the arm from the race track to effect a termination of a race.

I will describe one form of racing apparatus embodying my invention and will then point out the novel features thereof in claims.

In the accompanying drawings,

Figure 1 is a view showing in top plan a race track having applied thereto one form of racing apparatus embodying my invention.

Fig. 2 is an enlarged vertical sectional view taken on the line 2—2 of Fig. 1.

Fig. 3 is a top plan view of the lure conveying car comprised in the apparatus shown in the preceding views.

Fig. 4 is a fragmentary view partly in section showing the current collector and constituting a part of the conveyor car shown in Fig. 3.

Fig. 5 is an enlarged transverse section taken approximately on the line 5—5 of Fig. 3.

Fig. 6 is an enlarged cross section taken on the line 6—6 of Fig. 3, and with dotted lines showing a tripping device for a movable part of the apparatus.

Fig. 7 is a view similar to Fig. 6 showing one form of trip embodying my invention in engaging position with respect to the latch device.

Similar reference characters refer to similar parts in each of the several views.

Referring specifically to the drawings, my invention in its present embodyment, comprises a race track R over which the animals are adapted to travel, this track, in the present instance, being of endless form as shown in Fig. 1 and encircled by a partition or fence F. At the inner side of and in a plane below the track R. is a conveyor track C also endless and including track rails 15 over which a lure conveying car designated generally at K is adapted to travel. The

conveyor track and car are concealed and protected from the elements by a housing H formed on its track side with a relatively narrow slot or passage 16 in which is adapted to travel an arm A having a lure L supported thereon in the manner clearly shown in Fig. 2.

As illustrated to advantage in Fig. 2, the conveyor car K includes a chassis 17 supported for movement over the rails by means of wheels 18 fixed to axles 19 and 20, the former axle constituting the front axle of the car and being swivelly sustained on the chassis to allow of the necessary movement of the front wheels when traversing the endless curved portions of the track C. This swiveled front axle is yieldingly maintained in normal position by a suitable spring or springs, such as 19^a, that are secured to a fixed portion of the chassis and bear on the rear side of said front axle at points to the sides of its axis of swinging movement. The axle 20 constitutes the rear and driving axle of the car and is adapted to be driven by an electric motor 21 through the medium gears 22. Current is conveyed to the motor M by means of a current collector which, as clearly shown in Fig. 4, includes an arm 23 pivoted upon the chassis at the point indicated at 24 and carrying a shoe 25 normally urged into contact with the third rail 26 by means of a spring 27.

As shown in Fig. 5, a stationary disc 29 is fixed secured upon a yoke 29 rising from the chassis 17 and suitably secured thereto. Arranged in superimposed relation with respect to the disc 28 is a movable disc 30 mounted for rotational movement by means of a bolt 31 extending axially through both of said discs. The disc 30 forms a support for the arm A with the latter bolted thereto in the manner shown in Fig. 5 and extending radially therefrom with the lure L mounted on the outer end of the latter. The arm A and consequently the disc 30 is normally urged to a retracted position with respect to the race track R and the slot 16 so that the lure is disposed within the housing H. This is effected through the medium of a coiled contractile spring 32 secured at one end to the arm A and at its opposite end to the chassis 17, all in the manner clearly shown in Fig. 3.

To maintain the arm A in projected position wherein the lure L is disposed directly above the track R, a latch 33 pivoted at the point 34 is adapted to engage within recesses 35 formed in the discs 28 and 30 so as

to lock the disc 30 against rotation upon the disc 28. This latch 33 is normally urged to latching position through the action of gravity, but is adapted to be moved to releasing position by means of a trip 36 located between the track rails 15 and in the path of movement of the latch 33. The trip 36 is capable of tripping and non-tripping positions. and to this end it is mounted on a shaft 37 journaled in bearings 38 and provided with an operating crank 39 which can be extended to any suitable point for operation as will be understood from the consideration of Fig. 2.

To provide positive means for securing the arm A in retracted position and to prevent any swaying movement thereof when in such position, a spring latch 39 is secured to the yoke 29 so as to engage in a notch 40 formed in the movable disc 30, it being clear by consideration of Fig. 3 that the notch is in registration with the latch only when the arm A is in retracted position.

In the operation of the racing apparatus, the supply of current to the motor 21 of the conveyor car is controlled by rheostat 41 within a tower 42 adapted to be occupied by an operator and located at one side of the track as clearly shown in Fig. 1. A grandstand 43 may be provided for accommodation of the audience, as is clearly shown in Fig. 1. When current is supplied to the motor, a driving of the rear wheels 18 is effected to cause forward movement of the car K, and with the arm A in extended position to dispose the lure within the race track, which lure is caused to rapidly move along and above the track thereby inducing the animals to race about the track as will be understood. By virtue of the fact that the conveyor track is endless, the lure can be continuously moved throughout the entire length of the race track thereby inducing the animals to traverse the track as many times as desired.

When it is desired to terminate the race, the trip 36 is moved to tripping position so that when the car passes its point, the latch 33 will engage the trip and thus be moved free of the disc 30 to allow the spring 32 to effect a retraction of the arm A so that the lure is drawn into the housing and out of sight of the animals.

Although I have herein shown and described only one form of racing apparatus embodying my invention, it is to be understood that various changes and modifications may be made herein without departing from

the spirit of the invention and the spirit and scope of the appended claims.

I claim as my invention:

per A 1. A racing apparatus of the character described comprising an endless ~~racbe~~ track, an endless conveyor track within the area defined by the race track, a slotted housing for the conveyor track, a car movable over the conveyor track and within the housing, ~~and~~ per B Insert B¹ a lure ~~supporting arm sustained on the car and extending through the slot of said housing to position the lure within the race track.~~

2. In a racing apparatus of the character described, a race track, a conveyor track, a housing for the conveyor track, a car movable over the conveyor track, and a lure sustaining arm movably supported on the car to occupy an extended position in which the lure Insert ~~B2~~ C¹ is disposed in the race track ~~and~~ a retracted position in which the lure is withdrawn into the housing.

3. In a racing apparatus of the character described, a race track, a conveyor track, a housing for the conveyor track, a car movable over the conveyor track, a lure sustaining arm movably supported on the car to occupy an extended position in which the lure is disposed in the race track and a retracted position in which the lure is withdrawn into the housing, means for normally urging the arm to the retracted position, means for retaining the arm in extended position, and means for releasing said retaining means to effect a retraction of said arm at a predetermined point within the race track.

4. In a racing apparatus of the character described, a car, a lure supporting arm movably sustained on the car to occupy either of two extreme positions, means for urging the arm to one extreme position, means for retaining the arm in the other extreme position against the action of said urging means, and means disposed in the path of movement of said retaining means for releasing the latter to permit said arm to respond to the action of said urging means.

5. In a racing apparatus of the character described, a car, a lure supporting arm movably sustained on the car to occupy either of two extreme positions, means for urging the arm to one extreme position, means for retaining the arm in the other extreme position against the action of said urging means, and a trip disposed in the path of movement of said re-

taining means movable to occupy tripping and non-tripping positions with relation to said retaining means.

6. In a racing apparatus of the character described, a car, a stationary member sustained on the Insert B¹ ~~car, a movable member superimposed with relation to the stationary~~ member, an a lure arm fixed to the movable member, means for urging the arm and movable member to one extreme position, a latch for securing the movable member in another extreme position against the action of said urging means, and a trip adapted to be engaged by said latch for moving the latter to released position with respect to the movable member.

7. In a racing apparatus of the character described, a car, a disc fixedly secured to the car, a second disc movably sustained on the first disc, an arm fixed to the movable disc, a spring associated with said arm for urging the latter to one extreme position, a spring latch engageable with said discs for retaining the arm in urged position, a gravity latch engaging the discs for securing the arm in another extreme position against the action of said spring, and a trip for moving the gravity latch to released position.

Add A¹
Cls 8-9

In testimony whereof I have signed my name to this specification.

William C. Creveling.

OATH

State of California, }
County of Los Angeles } ss.

William C. Creveling the above named petitioner, being sworn, deposes and says that he is a citizen of the United States and resident of Los Angeles, in the County of Los Angeles, State of California, and that he verily believes himself to be the original, first, and sole inventor of the improvements in Animal Racing Tracks described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery

Plaintiff's Exhibit 7

thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application, and that no application has been filed by him or his representatives or assigns in any country foreign to the United States.

(Applicant sign here) William C. Creveling.

Subscribed and sworn to before me this 19th day of December 1921.

(Signature of Officer administering oath)

Mabel E. Hennecke,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Nov. 7, 1925.

Div. 7 Room 312 2—260 V Paper No. . . . 2

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number, date of filing, title of invention and name of the applicant.

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington Oct. 27, 1922

Stamped—U. S. Patent Office Oct 27 1922 Mailed.

Hazard & Miller
506 Central Bldg.
Los Angeles, Calif.

Please find below a communication from the Examiner in charge of the application of W. C. Creveling, filed Dec. 29, 1921, Animal Racing Track Serial No. 525,538.

Thomas E. Robertson,
Commissioner of Patents.

Fig. 7 described in lines 8 to 11 page 2 of the specification should be numbered on the drawing.

Plaintiff's Exhibit 7

Claim 1 is rejected on
Smith 1,379,224 May 24, 1921 46-73
Claims 2 to 6 inclusive are rejected on Smith and
Everett 1,052,807 Feb. 11, 1913 46-73

There is no invention in disposing the lure of Smith within the housing in view of Everett. Cable 8 of Everett is the eqpivalent of the card of the claims especially in view of Smith. It is immaterial whether the lure falls by gravity as in Everett or is retracted by a spring as claimed.

Claim 7 is allowed.

CJ

C. G. Jarboe.
Examiner.

Mail Room
Dec 14 1922
U. S. Patent Office

Amendment A
13

Los Angeles, Calif.,
December 9th, 1922.
972

Div. 7, Room 312,
W. C. Creveling,
Animal Racing Track,
Filed Dec. 29th, 1921,
Serial No. 525,538.

Hon. Commissioner of Patents,
Washington, D. C.

U. S. Patent Office
Dec 15 1922
Division VII

Sir:

In response to the Office letter of October 27th, 1922, please amend the above entitled application as follows:

Claim 1, line 2, change "rach" to race

Add the following:

8. A racing apparatus of the character described comprising an endless race track, a conveyor track within the area defined by the race track, a car movable over the conveyor track, and a lure supporting arm sustained on the car for movement over the race track (4) B⁴.

A¹

Insert B⁴

9. A racing apparatus of the character described comprising an endless race track, an endless conveyor track within the area defined by the race track,

Insert C² B5 (7) B5 C²

~~and a lure carrying car movable over the conveyor track~~

Plaintiff's Exhibit 7

REMARKS.

The Examiner is respectfully asked to instruct the Ex See Chief Draftsman to apply Figure 7 to the unnumbered figure at the bottom of sheet 2.

In interpreting applicant's claims in view of the references, it is evident that the Examiner has failed to appreciate the importance of providing an endless conveyor track in conjunction with an endless race track so as to permit of the movement of the lure around the race track any number of times to induce the animals to traverse the race track one or more times. This is a primary object of applicant's invention, and as he interprets the references, neither is capable of effecting such a movement of the lure. In Everett, the lure can only traverse the track once when [illegible] into the well casing 22.

In view of the foregoing remarks, it is contended that applicant is rightfully entitled to the combinations as set forth in claims 1, 8 and 9.

It is contended that claim 3 clearly differentiates from the references in the last five lines thereof, the references failing to disclose any means by which the lure supporting arm is normally urged to retracted position, and the other means set forth.

Claims 4, 5 and 6 so clearly differentiate from the references as not to warrant discussion. The statement that it is immaterial whether the lure falls by gravity as in Everett or is retracted by a spring is thought to be in error. Applicant provides positive means for actuating the lure supporting arm, and the gravity means of Everett cannot be considered its equivalent. It is therefore believed that upon reconsideration, the Examiner will withdraw his objections, and allow the claims.

Respectfully submitted,
Hazard & Miller,
Attorneys for Applicant.

EDJ:L.

Plaintiff's Exhibit 7

Stamped—Docket Division Apr 12 1923 U. S. Patent Office. #4

Mail Room Apr 12 1923 U. S. Patent Office.

Doc

Atlantic City, N. J.
April 10, 1923

Hon. Commissioner of Patents,

Sir:—

In the matter of my application for Letters Patent for improvement in Animal Racing Tracks, filed December 00, 1921, Serial No. 525,538, I hereby constitute and appoint John A. Wiedersheim and E. Hayward Fairbanks, constituting the firm of Wiedersheim & Fairbanks, of No. 1232 Chestnut Street, Philadelphia, Pennsylvania, my attorneys in all matters relative to the same.

I revoke all former powers of attorney.

William C. Creveling.

(Formerly of Los Angeles, Cal. at present 104 S. Montpelier Ave., Atlantic City, N. J.)

U. S. Documentary 25c I. R. Stamp
Accepted. Apr 13 1923.

T. E. Robertson,
Commissioner.

EEC 2—069 #5

Address only
The Commissioner of Patents
Washington, D. C.

DEPARTMENT OF THE INTERIOR,

United States Patent Office,
Washington, D. C.

April 13, 1923.

You are hereby informed that Your Power of Attorney Has Been Accepted in the matter of the application of William C. Creveling for Letters Patent for an Improvement in Animal Racing Tracks No. 525,538 Filed Dec. 29, 1921.

Very respectfully,
Thomas E. Robertson,
Commissioner.

Wiedersheim and Fairbanks,
1232 Chestnut St.,
Philadelphia, Pa.

Plaintiff's Exhibit 7

EEG 2—069

Address only
The Commissioner of Patents
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
United States Patent Office,
Washington, D. C.

April 13, 1923.

You are hereby informed that Your Power of Attorney Has Been Revoked in the matter of the application of William C. Creveling for Letters Patent for an Improvement in Animal Racing Tracks No. 525,538 Filed Dec. 29, 1921.

Very respectfully,
Thomas E. Robertson,
Commissioner.

Hasard and Miller,
506 Central Bldg.,
Los Angeles, Calif.

Div. 7 Room 312 260 V Paper No. 6

Address only
"The Commissioner of Patents,
Washington, D. C."
and not any official by name.

All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR,
United States Patent Office,
Washington

May 9, 1923

Stamped—U. S. Patent Office May 9 1923 Mailed.
Wiedersheim & Fairbanks

1232 Chestnut St.
Philadelphia, Pa.

Please find below a communication from the Examiner in charge of the application of W. C. Creveling, filed Dec. 29, 1921, Animal Racing Track, Serial No. 525,538.

Thomas E. Robertson,
Commissioner of Patents.

Plaintiff's Exhibit 7

In response to amendment filed Dec. 14, 1922.

Claim 1 is again rejected on Smith of record in which every feature of the claim is clearly disclosed in the same relation and performing the same function. The claim is further rejected on

Smith 1,410,842 Mar. 28, 1922 46-73
(Filed Aug. 28, 1920)

Claim 2 is rejected on either of the Smith references or on either Smith especially in view of Everett of record.

Smith 1,379,224 shows an arm 26, pivoted at 25 and retained in one position by the spring 40, Figs. 2 and 5. There is no particular structural relation between the casing and the lure of the claim. It is immaterial as claimed whether the lure is urged to operative or inoperative position by the spring. Lure sustaining arm 17 of Everett is clearly shown in Figs. 3 and 5 as movably supported to occupy the two positions of the claim. There would be no invention in providing either Smith with the lure sustaining arm of Everett.

The relation between the stationary member, line 2, claim 6 and other features of the claim should be included.

Claims 2 to 5 inclusive are upon reconsideration allowable, and claim 6 covers allowable subject matter.

Claim 7 stands allowed.

Claims 8 and 9 are rejected as directly anticipated by either Smith or Everett all above mentioned.

The lure of Smith 1,379,224 may be carried twice or more around an endless track as stated in lines 10 to 20 of page 3 of the specification. Stop 24 of Everett may be moved and replaced. The above mentioned features are further not recited in the claims.

CJ

C. C. Jarboe,
Examiner.

Plaintiff's Exhibit 7

Application Div.
May 31 1923
U. S. Patent Office

Amendment B
27

In the United States Patent Office.

In the matter of the application of

William C. Treveling,
for patent for improvement in
Animal Racing Tracks,
filed Dec. 29, 1921, Serial No. 525,538

Before the
Examiner in room
312

Phila., Pa.
May 28th, 1923.

U. S. Patent Office
Jun 1 1923
Division VII
Hon. Commissioner of Patents
Washington, D. C.

Sir:—

I hereby amend my application in answer to the Office Letter of May 9th, 1923, as follows:—

Not Seen Page 2, line 289, after "slot" insert "or passage"

Claim 1, cancel "and" line 5, before "a lure",

Cancel lines 6, 7 and 8, and insert porting arm, a horizontally arranged movable member pivotally mounted on the car and having said arm rigidly connected therewith, a latch on the car adapted to be engaged with said member to lock the latter in the operative position of the lure, a trip member adapted to engage said latch to release said member, and means connected with said arm and car adapted to automatically retract the lure from the track to an inoperative position.

Claim 2, line 6, cancel "and" and insert "means for locking said arm in said position, and a device connected with said arm and the car automatically acting to place said arm in"

Claim 6, cancel line 3, and insert car, a movable member mounted on said station—

Line 4, cancel "an" and insert "a lure"

Claim 8, line 4, cancel "and"

Line 6, after "track" insert a latching device for said arm in the operative position of the lure, means for releasing said device, and means connected with said arm and the car adapted to automatically retract the arm to an inoperative position for the lure.

Plaintiff's Exhibit 7

Claim 9, line 4, cancel "and."

Cancel the last line, and insert "a car movable on said conveyor track, a housing on the conveyor track, Sub C² said housing having a passage in its side, a lure carrying arm rotatably mounted on the car, said arm being movable in opposite directions in said passage, B⁵ means for locking said arm in the operative position of the lure, and means for automatically retracting said arm to an inautomatic position of said lure in said housing."

REMARKS.

The rotatable carrier of the lure arm has thereon means for locking it in the operative and inoperative position of the lure. Then it has the spring 32 connected with it to become operative to automatically retract the arm when unlatched from the operative position of the lure on the track to place the arm in an unautomatic position in the housing for which purpose the latter has in its side the slot or passage to allow the arm to move therein in its opposite motions.

Then the locking latch 33 meets in its path the trip 36 set by the manually operated crank arm 39, and so is drawn away from the rotatable member 30 when the spring 32 causes an automatic rotation of the arm into the housing through the passage 16.

Smith's spring 40 is designed to have the wheel 28 run on the ground and he provides also the shoe 30 run on the ground. Such features are not needed by me since my lure arm is rigidly connected with the rotating plate 30. I also dispense with hinges or hinged connections for the lure arm on the car.

It is believed that I have valuable features in my construction as not existing in the references, and so it is believed that patentability is presented as now claimed.

All of which is respectfully submitted for the favorable consideration of the Examiner.

William C. Greveling,
By Wiedersheim & Fairbanks,
Attorneys.

Plaintiff's Exhibit 7

Div. 7 Room 312 2—260 V Paper No. 8

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

June 7, 1923

Stamped—U. S. Patent Office Jun 7-1923 Mailed.

Wiedersheim & Fairbanks

1232 Chestnut St.
Philadelphia, Pa.

Please find below a communication from the Examiner in charge of the application of W. C. Creveling, filed Dec. 29, 1921, Animal Racing Track, Serial No. 525,538.

Thomas E. Robertson,
Commissioner of Patents.

In response to amendment filed May 31, 1923.

Claim 2 as amended is incomplete as the lock releasing means an essential element is not included. The claim is further inaccurate as the device connecting the arm and car does not automatically withdraw the arm until the arm is unlocked and the unlocking means is further attached to neither the arm nor the car as apparently inferentially included in the claim.

Claim 2 is accordingly rejected as not distinctly defining the invention.

Claim 2, if amended to include the locking means for the arm, would then be a duplicate of allowed claim 8.

"Inautomatic" in the next to the last line of claim 9 is not understood and should probably be inoperative.

Claim 9 is rejected as incomplete for reasons stated in the rejection of claim 2, the releasing means for the lock being omitted from the claim.

With the above exceptions, this case is in condition for allowance.

CJ

C. G. Jarboe,
Examiner.

Plaintiff's Exhibit 7

Amendment C
#9

Mail Room
Jun 12 1923
U. S. Patent Office

U. S. Patent Office
Jun 19 1923
Division VII

In the United States Patent Office.

In the matter of the application of
William C. Creveling,
for patent for improvement in
Animal Racing Tracks,
filed Dec. 29, 1921, Serial No. 525,538.

Before the
Examiner in room
312.

Phila., Pa.
June 16, 1923

Hon. Commissioner of Patents,

Sir:—

I hereby amend my application in answer to the Office Letter of June 7th, 1913, as follows:—

Claim 2, cancel the amendment to line 6 and substitute a lock for said arm in said position, means for releasing said lock, and a device connected with said
C1 arm and a member on the body of the car automatically acting to place said arm in

Claim 9, cancel the amendment to the last line and substitute a car movable on said conveyor track, a housing on the conveyor track, said housing having a passage in its side, a lure carrying arm rotatably mounted on the car, said arm being movable in opposite directions in said passage, a lock for said arm in
C2 the operative position of the lure, means for releasing said lock, and means for automatically retracting said arm to an inautomatic position of said lure in said housing. sig.

REMARKS.

The requirements of the Examiner as to claims 2 and 9 are appreciated. Claim 2 is limited to "a device automatically acting to place the arm in a retracted position in which the lure is withdrawn into the housing."

Claim 8 is limited to means adapted to automatically retracting the arm to an inoperative position for the lure."

Plaintiff's Exhibit 7

For the fullest protection to me, it is asked that claims 2 and 8 may both be allowed, all of which is respectfully submitted for the favorable consideration of the Examiner.

William C. Creveling,
By Wiedersheim & Fairbanks,
Attorneys.

Div. 7 V

Serial No. 525,538

Address only
The Commissioner of Patents
Washington, D. C.

2—181

Department of the Interior
UNITED STATES PATENT OFFICE
Washington

June twenty two, 1923

William C. Craveling, Assor. etc.

Sir: Your Application for a patent for an Improvement in

Animal Racing Track

filed Dec. 29, 1921, has been examined and Allowed. 9 claims.

The final fee, Twenty Dollars, must be paid not later than Six Months from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed with an additional fee of $20, under the provisions of Section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you will also send, Distinctly and Plainly Written, the name of the Inventor, Title or Invention, and Serial Number as Above Given, Date of Allowance (which is the date of this circular), Date of Filing, and, if assigned, the Names of the Assignees.

If you desire to have the patent issued to Assignees, an assignment containing a Request to that effect, together with the Fee for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the patent uncertified copies of the

IN REMITTING THE FINAL FEE GIVE THE SERIAL NUMBER AT THE HEAD OF THIS NOTICE.

UNCERTIFIED CHECKS WILL NOT BE ACCEPTED.

Plaintiff's Exhibit 7

drawings and specifications may be purchased at the price of Ten Cents Each. The money should accompany the order. Postage stamps will not be received.

Final fees will Not be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully.
Thomas E. Robertson,
Commissioner of Patents.

Wiedersheim & Fairbanks
1232 Chestnut St.
Philadelphia, Pa.

2—327.

FINAL FEE PAID TO UNITED STATES PATENT OFFICE.

$20. Rec'd
Dec 22 1923
C. C. U. S. Pat Office

(Be careful to give correct Serial No.)

Serial No. 525538
Inventor:
William C. Creveling
Patent to be Issued to:

.....

Name of Invention, as Allowed:
Animal Racing Track
Date of Payment:
December 22, 1923

Fee:
Final $20.

Date of Filing:
Dec. 29, 1921

Date of Circular of Allowance:
June 22, 1923

The Commissioner of Patents will please apply the accompanying fee as indicated above.

Wiedersheim & Fairbanks,
Attorneys.

Send Patent to
Wiedersheim & Fairbanks,
13th & Chestnut Streets,
Philadelphia, Pa.

Plaintiff's Exhibit 7

For W. C. Creveling Patent No. 1,481,313 dated Jan. 22, 1924 see Defendant's Exhibit "G" pages 146 to 162.

2—421

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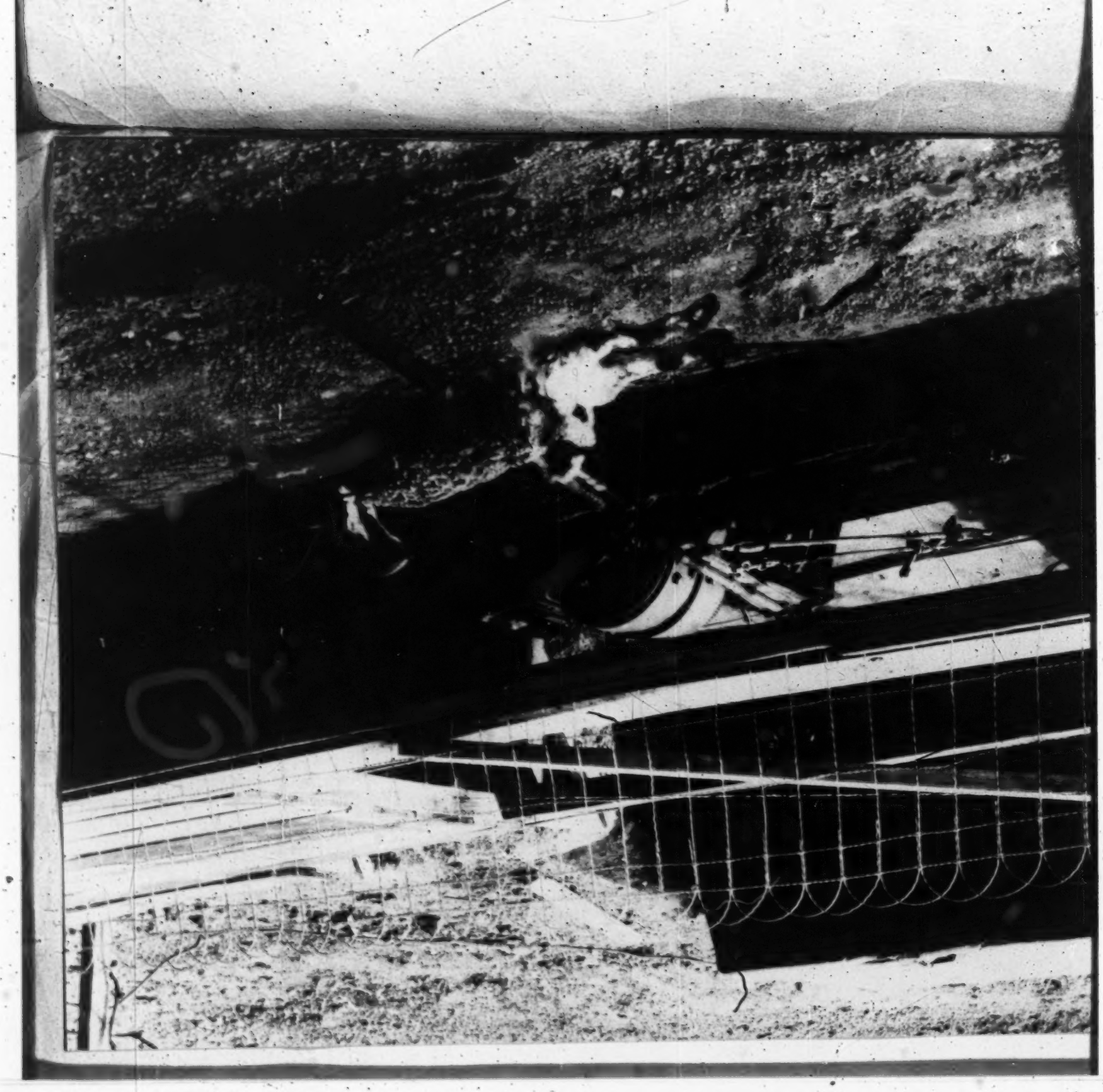
46. Games and Toys,
Arenas.

1921

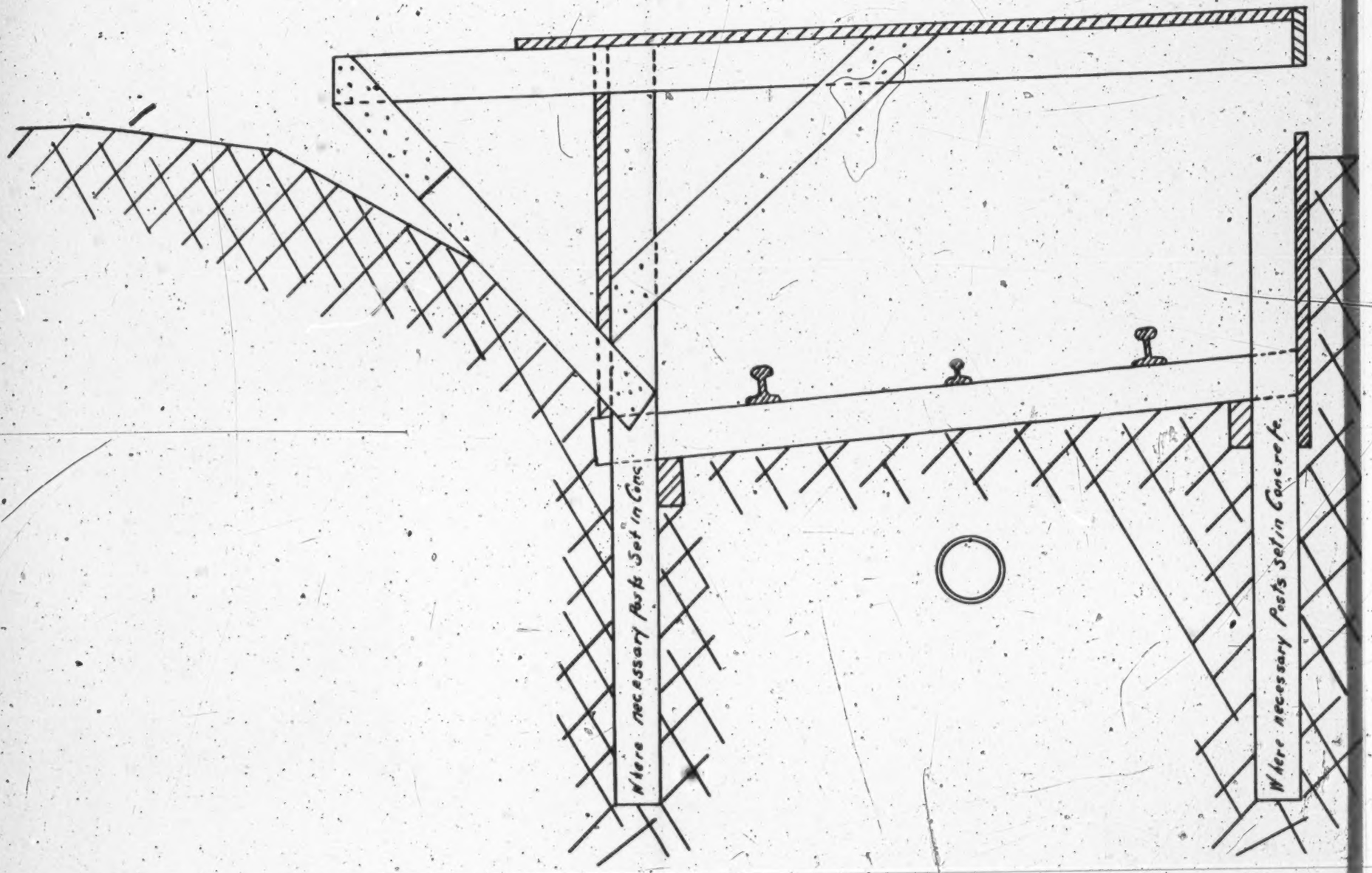
CONTENTS:

1. Application 1 papers.
2. Rej. Oct. 27-1922
3. Amendment A Dec. 14, 1922
4. Revocation and Power of Attorney April 12/23
5. Notices of Revocation and Acceptance Apr. 13/23
6. Rej. May 9-1923
7. Amendment B May 31, 1923
8. Rej. June 7-1923
9. Amendment C June 18, 1923

Defendant's Exhibit "A"



Defendant's Exhibit "B"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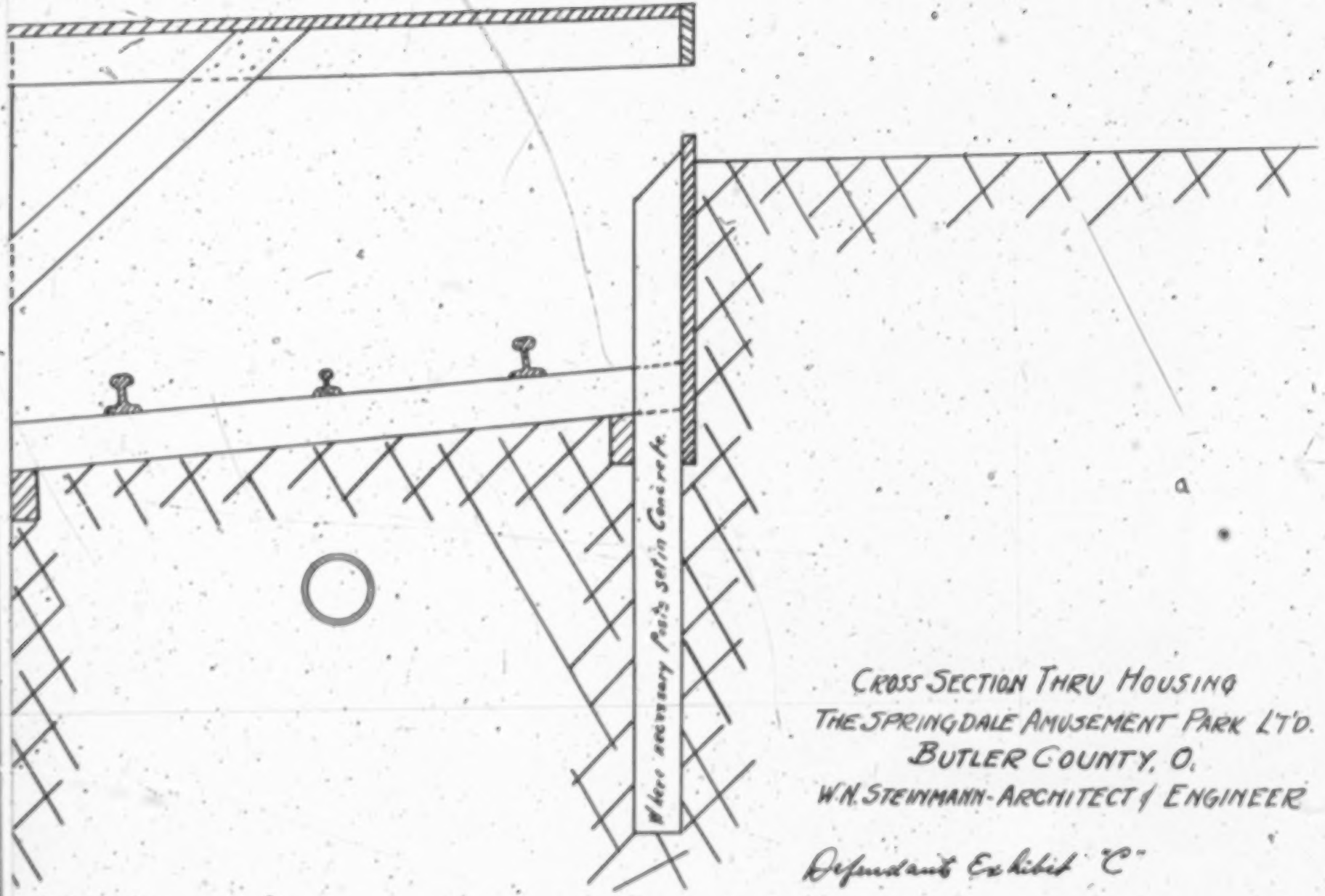
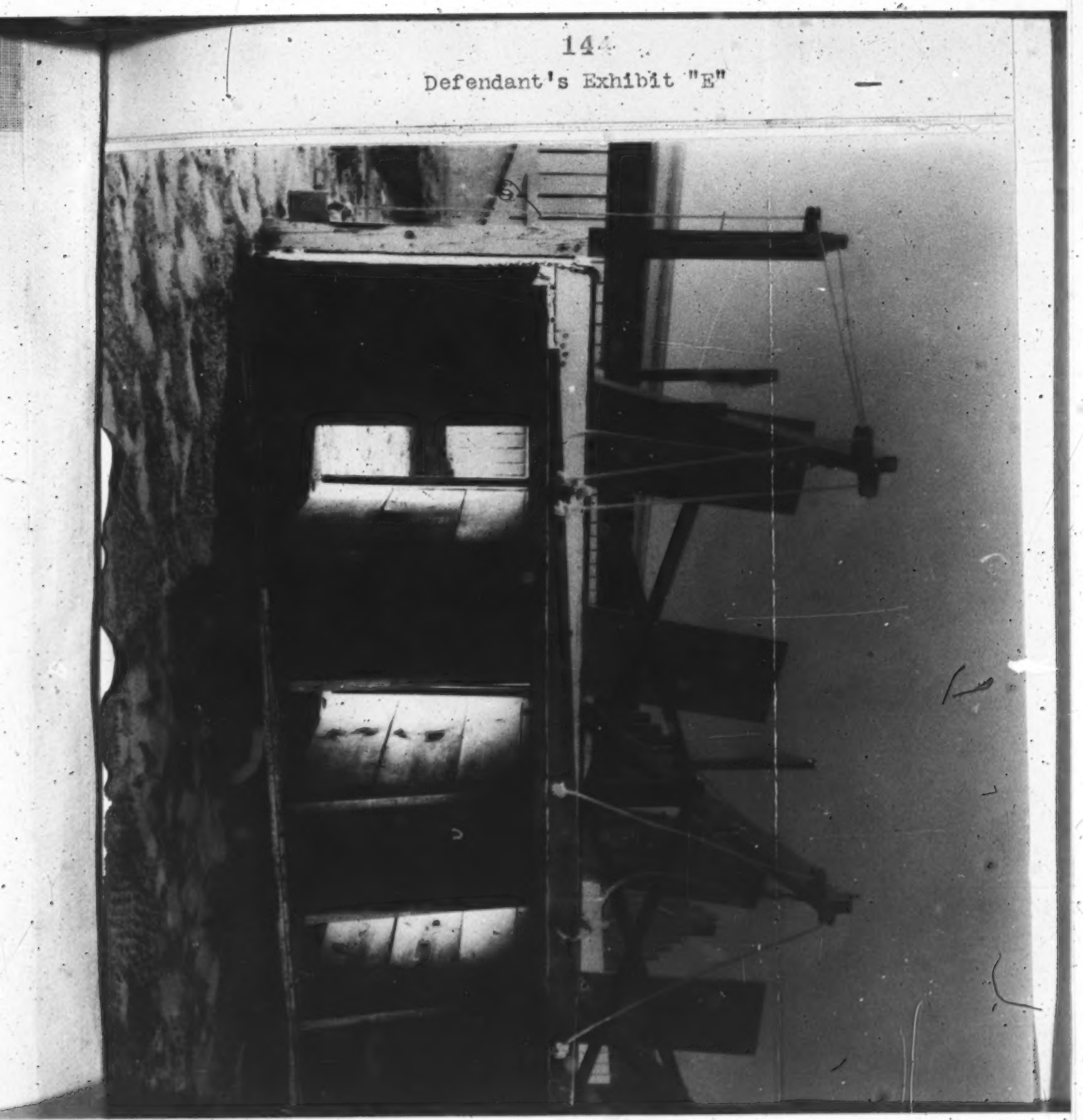


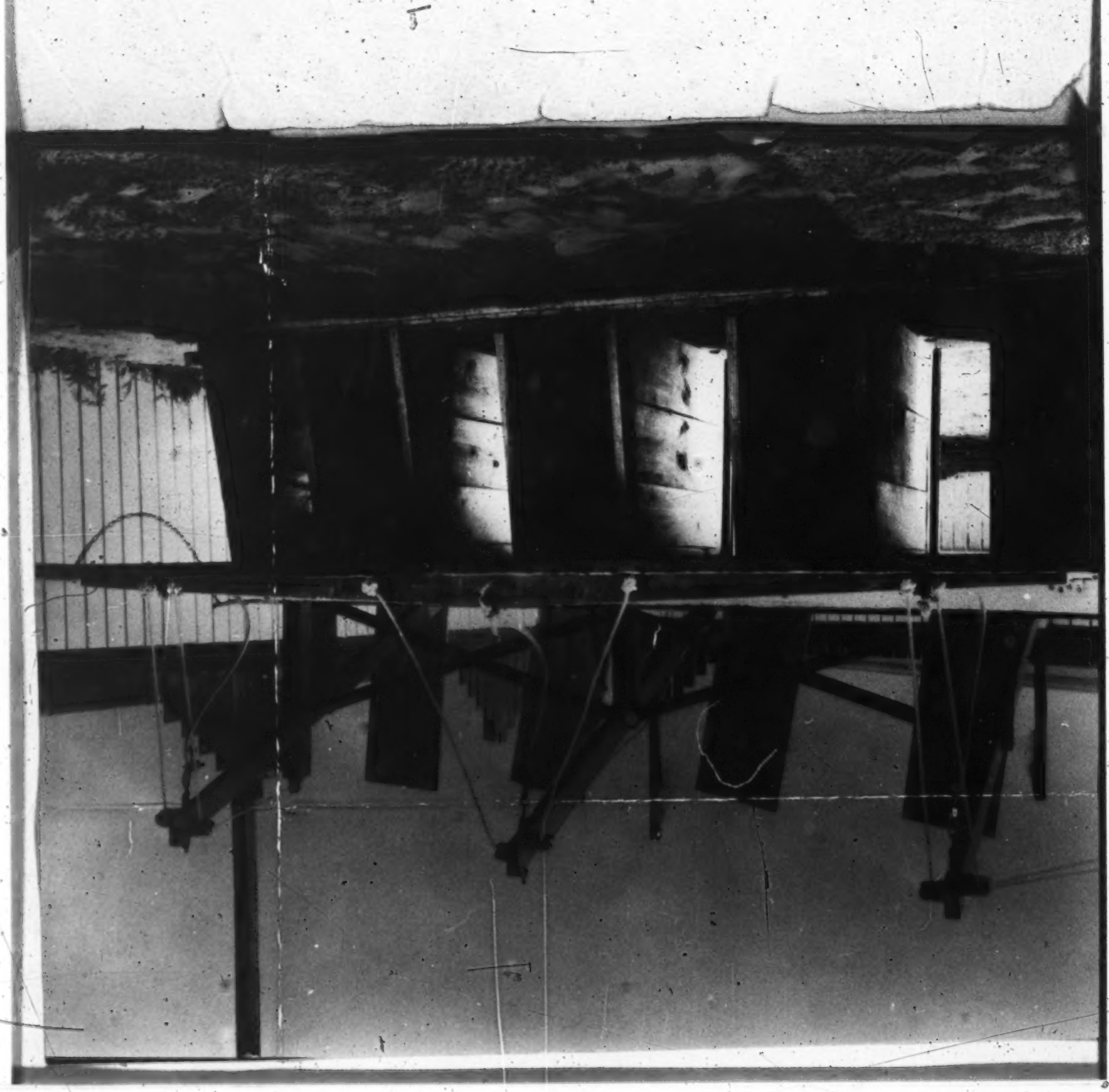
CROSS SECTION THRU HOUSING
THE SPRINGDALE AMUSEMENT PARK LT'D.
BUTLER COUNTY, O.
W.N. STEINMANN - ARCHITECT & ENGINEER

Defendant's Exhibit "C"

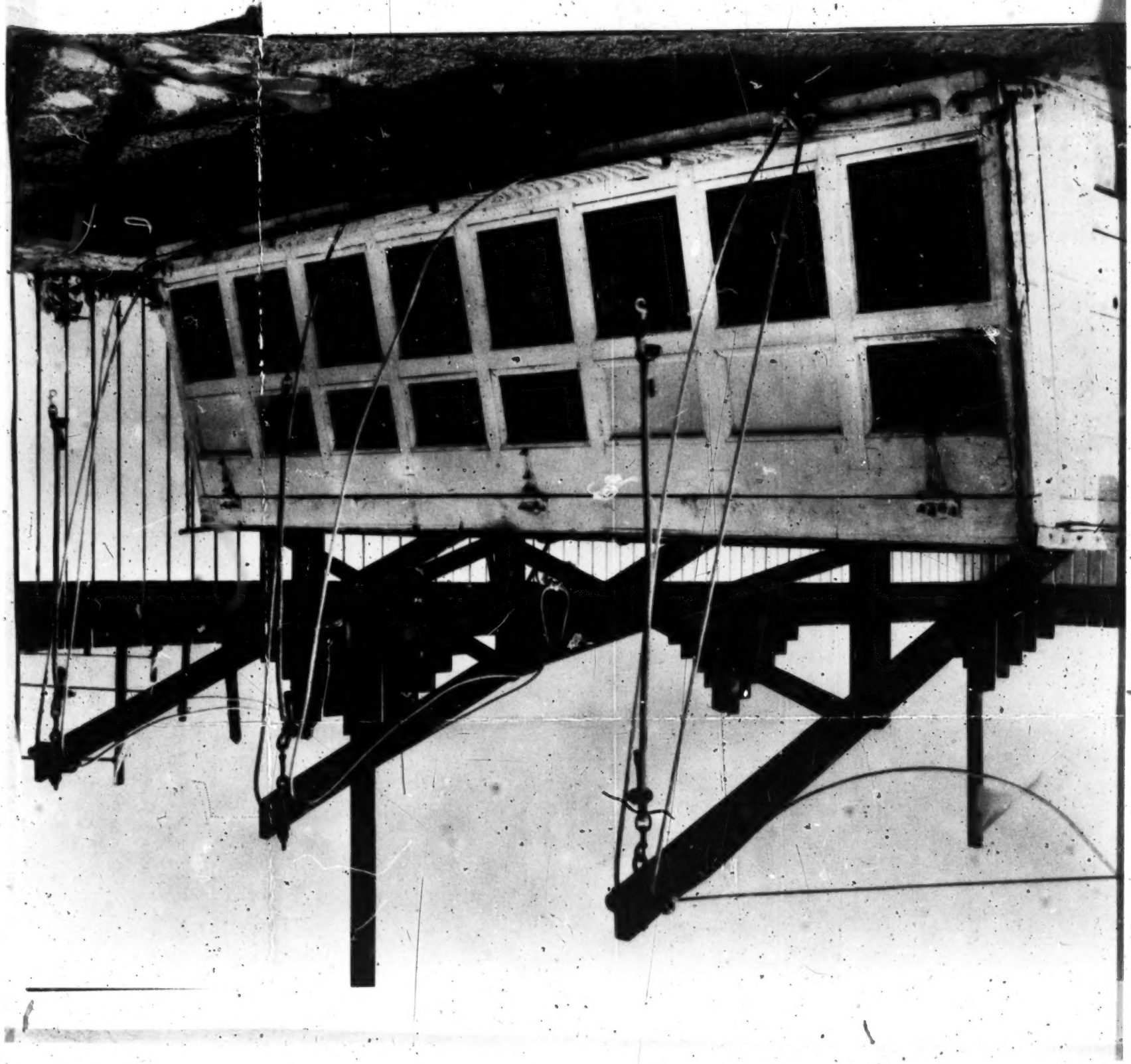
Defendant's Exhibit "D"

Defendant's Exhibit "E"





Defendant's Exhibit "F"



DEFENDANTS' EXHIBIT "G"

CREVELING PATENT NO. 1,481,313

JANUARY 22, 1924.

Jan. 22, 1924. 1,481,313

W. C. CREVELING

ANIMAL RACING TRACK

Filed Dec. 29, 1921 2 Sheets-Sheet

FIG. 1.

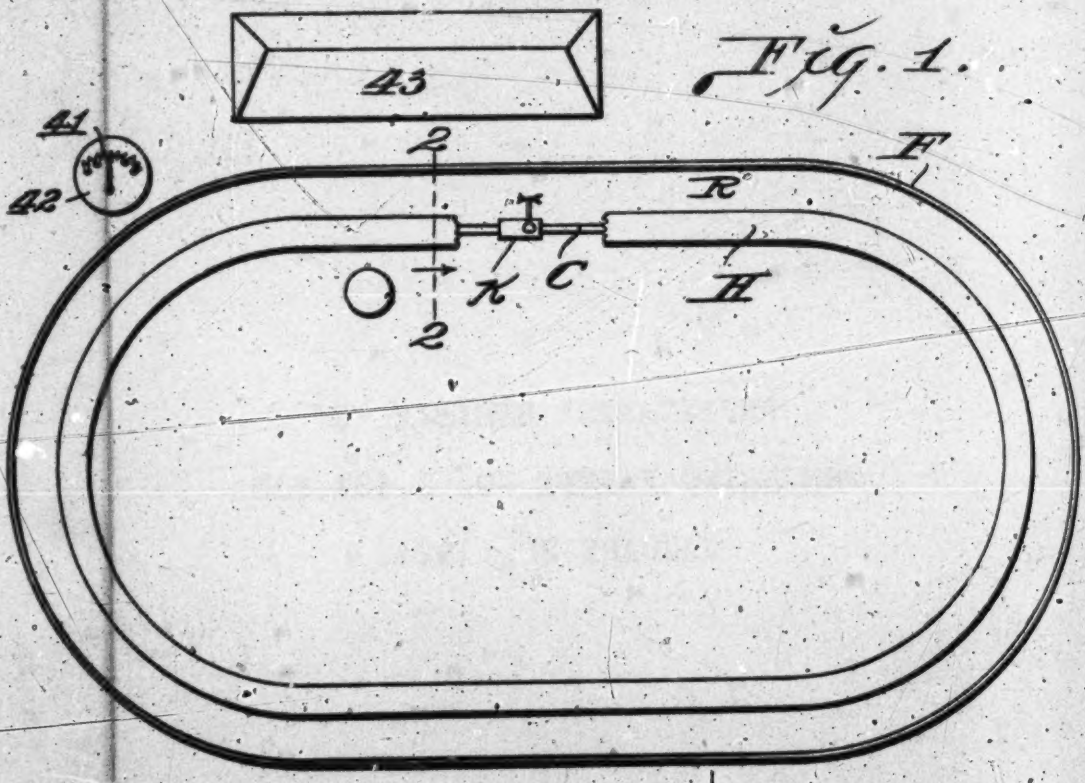
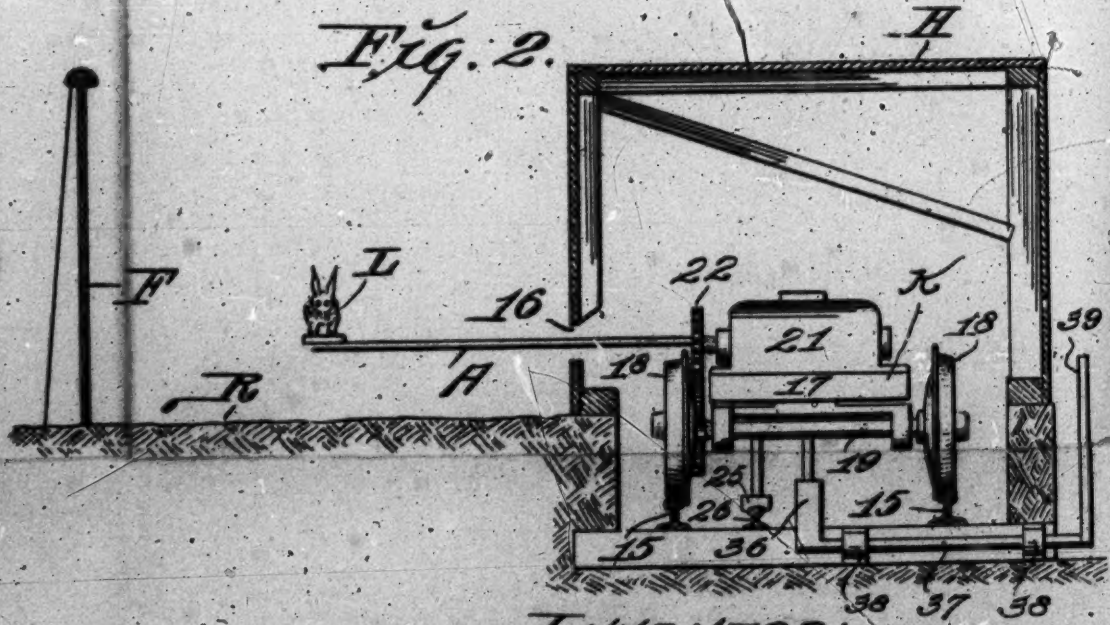


FIG. 2.



INVENTOR:
WM. C. CREVELING

Jan. 22, 1924.

W. C. CREVELING

1,481,313

ANIMAL RACING TRACK

Filed Dec. 29, 1921

2 Sheets-Sheet 2

Fig. 3

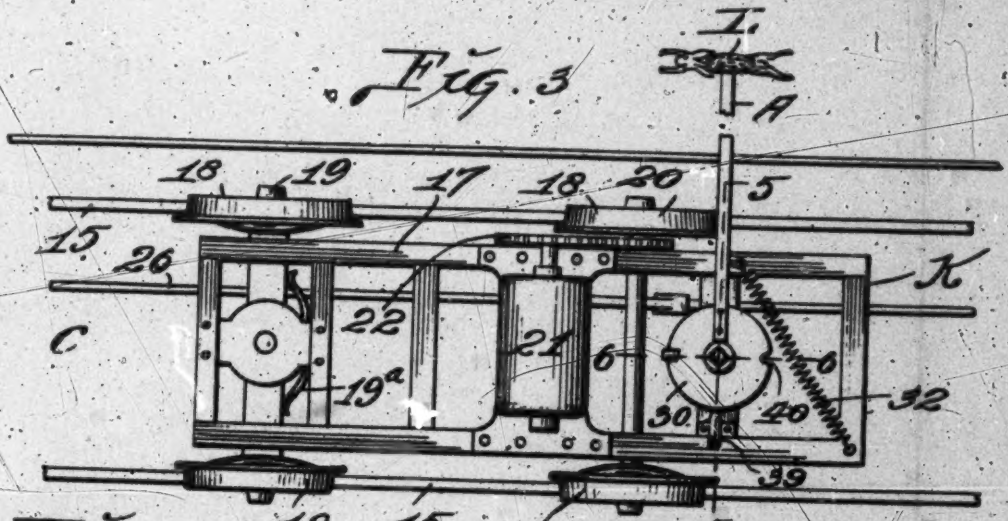


Fig. 4

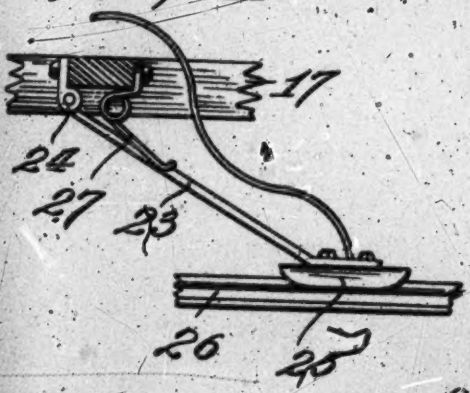


Fig. 5.

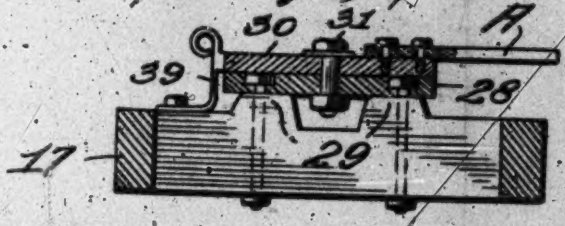


Fig. 6.

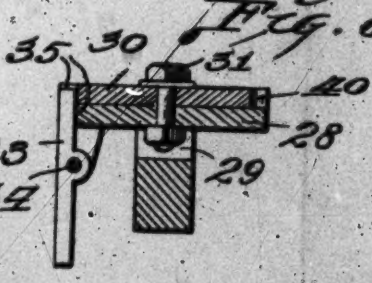
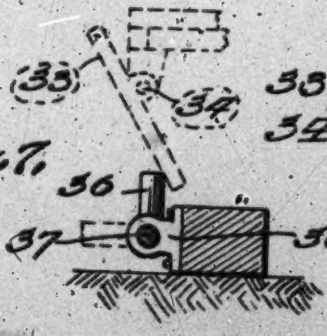


Fig. 7.



INVENTOR:—

WM. C. CREVELING

Patented Jan. 22, 1924. 1,481,313

United States Patent Office

William C. Creveling, of Los Angeles, California, Assignor of One-third to William W. Finn, of San Diego, California, One-third to John O. Talbott, of Denver, Colorado, and One-sixth to Agnes Creveling, of Los Angeles, California

Animal Racing Track

Application filed December 29, 1921. Serial No. 525,538

To all whom it may concern:

Be it known that I, William C. Creveling, a citizen of the United States, residing at Los Angeles, in the county of Los Angeles and State of California, have invented new and useful Improvements in Animal Racing Tracks, of which the following is a specification.

My invention relates to animal racing apparatus of that character in which dogs or other like animals are induced to race about a track by means of a lure or object conveyed mechanically along the track.

A purpose of my invention is the provision of a racing apparatus of the above described character including a lure conveying car which is movable over a conveyor track arranged within the area defined by the race track to permit of the forming of endless race and conveyor tracks so that the animals can be induced to traverse the entire race track one or more times.

It is also a purpose of my invention to provide a racing apparatus in which the lure conveying car is so constructed as to insure of its easy and unrestricted movement over the conveyor track, and one which includes a lure sustaining arm and means co-operating therewith for automatically causing a retraction of the arm from the race track to effect a termination of a race.

I will describe one form of racing apparatus embodying my invention and will then point out the novel features thereof in claims.

In the accompanying drawings,

Figure 1 is a view showing in top plan a race track having applied thereto one form of racing apparatus embodying my invention.

Fig. 2 is an enlarged vertical sectional view taken on the line 2—2 of Fig. 1.

Fig. 3 is a top plan view of the lure conveying car comprised in the apparatus shown in the preceding views.

Fig. 4 is a fragmentary view partly in section showing the current collector and constituting a part of the conveyor car shown in Fig. 3.

Fig. 5 is an enlarged transverse section taken approximately on the line 5—5 of Fig. 3.

Fig. 6 is an enlarged cross section taken on the line 6—6 of Fig. 3, and with dotted lines showing a tripping device for a movable part of the apparatus.

Fig. 7 is a view similar to Fig. 6 showing one form of trip embodying my invention in engaging position with respect to the latch device.

Similar reference characters refer to similar parts in each of the several views.

Referring specifically to the drawings, my invention, in its present embodiment, comprises a race track R over which the animals are adapted to travel, this track, in the present instance, being of endless form as shown in Fig. 1 and encircled by a partition or fence F. At the inner side of and in a plane below the track R, is a conveyor track C also endless and including track rails 15 over which a lure conveying car designated generally at K is adapted to travel. The conveyor track and car are concealed and protected from the elements by a housing H formed on its track side with a relatively narrow slot or passage 16 in which is adapted to travel an arm A having a lure L supported thereon in the manner clearly shown in Fig. 2.

As illustrated to advantage in Fig. 3, the conveyor car K includes a chassis 17 supported for movement over the rails by means of wheels 18 fixed to axles 19 and 20, the former axle constituting the front axle of the car and being swivelly sustained on the chassis to allow of the necessary movement of the front wheels when traversing the endless curved portions of the track C. This swiveled front axle is yieldingly maintained in normal position by a suitable spring or springs, such as 19ª, that are secured to a fixed portion of the chassis and bear on the rear side of said front axle

at points to the sides of its axis of swinging movement. The axle 20 constitutes the rear and driving axle of the car and is adapted to be driven by an electric motor 21 through the medium of gears 22. Current is conveyed to the motor M by means of a current collector which, as clearly shown in Fig. 4, includes an arm 23 pivoted upon the chassis at the point indicated at 24 and carrying a shoe 25 normally urged into contact with the third rail 26 by means of a spring 27.

As shown in Fig. 5, a stationary disc 28 is fixedly secured upon a yoke 29 rising from the chassis 17 and suitably secured thereto. Arranged in superimposed relation with respect to the disc 28 is a movable disc 30 mounted for rotational movement by means of a bolt 31 extending axially through both of said discs. The disc 30 forms a support for the arm A with the latter bolted thereto in the manner shown in Fig. 5 and extending radially therefrom with the lure L mounted on the outer end of the latter. The arm A and consequently the disc 30 is normally urged to a retracted position with respect to the race track R and the slot 16 so that the lure is disposed within the housing H. This is effected through the medium of a coiled contractile spring 32 secured at one end to the arm A and at its opposite end to the chassis 17, all in the manner clearly shown in Fig. 3.

To maintain the arm A in projected position wherein the lure L is disposed directly above the track R, a latch 33 pivoted at the point 34 is adapted to engage within recesses 35 formed in the discs 28 and 30 so as to lock the disc 30 against rotation upon the disc 28. This latch 33 is normally urged to latching position through the action of gravity, but is adapted to be moved to releasing position by means of a trip 36 located between the track rails 15 and in the path of movement of the latch 33. The trip 36 is capable of tripping and non-tripping positions, and to this end it is mounted on a shaft 37 journaled in bearings 38 and provided with an operating crank 39 which can be extended to any suitable point for operation as will be understood from the consideration of Fig. 2.

To provide positive means for securing the arm A in retracted position and to prevent any swaying movement thereof when in such position, a spring latch 39 is secured to the yoke 29 so as to engage in a notch 40 formed in the

movable disc 30, it being clear by consideration of Fig. 3 that the notch is in registration with the latch only when the arm A is in retracted position.

In the operation of the racing apparatus, the supply of current to the motor 21 of the conveyor car is controlled by rheostat 41 within a tower 42 adapted to be occupied by an operator and located at one side of the track as clearly shown in Fig. 1. A grandstand 43 may be provided for accommodation of the audience, as is clearly shown in Fig. 1. When current is supplied to the motor, a driving of the rear wheels 18 is effected to cause forward movement of the car K, and with the arm A in extended position to dispose the lure within the race track, which lure is caused to rapidly move along and above the track thereby inducing the animals to race about the track as will be understood. By virtue of the fact that the conveyor track is endless, the lure can be continuously moved throughout the entire length of the race track thereby inducing the animals to traverse the track as many times as desired.

When it is desired to terminate the race, the trip 36 is moved to tripping position so that when the car passes its point, the latch 33 will engage the trip and thus be moved free of this disc 30 to allow the spring 32 to effect a retraction of the arm A so that the lure is drawn into the housing and out of sight of the animals.

Although I have herein shown and described only one form of racing apparatus embodying my invention, it is to be understood that various changes and modifications may be made herein without departing from the spirit of the invention and the spirit and scope of the appended claims.

I claim as my invention:

1. A racing apparatus of the character described comprising an endless race track, an endless conveyor track within the area defined by the race track, a slotted housing for the conveyor track, a car movable over the conveyor track and within the housing, a lure supporting arm, a horizontally arranged movable member pivotally mounted on the car and having said arm rigidly connected therewith, a latch on the car adapted to be engaged with said member to lock the latter in the operative position of the lure, a trip member adapted to engage said latch to release said mem-

ber, and means connected with said arm and car adapted to automatically retract the lure from the track to an inoperative position.

2. In a racing apparatus of the character described, a race track, a conveyor track, a housing for the conveyor track, a car movable over the conveyor track, and a lure sustaining arm movably supported on the car to occupy an extended position in which the lure is disposed in the race track, a lock for said arm in said position, means for releasing said lock, and a device connected with said arm and a member on the body of the car automatically acting to place said arm in a retracted position in which the lure is withdrawn into the housing.

3. In a racing apparatus of the character described, a race track, a conveyor track, a housing for the conveyor track, a car movable over the conveyor track, a lure sustaining arm movably supported on the car to occupy an extended position in which the lure is disposed in the race track and a retracted position in which the lure is withdrawn into the housing, means for normally urging the arm to the retracted position, means for retaining the arm in extended position, and means for releasing said retaining means to effect a retraction of said arm at a predetermined point within the race track.

4. In a racing apparatus of the character described, a car, a lure supporting arm movably sustained on the car to occupy either of two extreme positions, means for urging the arm to one extreme position, means for retaining the arm in the other extreme position against the action of said urging means, and means disposed in the path of movement of said retaining means for releasing the latter to permit said arm to respond to the action of said urging means.

5. In a racing apparatus of the character described, a car, a lure supporting arm movably sustained on the car to occupy either of two extreme positions, means for urging the arm to one extreme position, means for retaining the arm in the other extreme position against the action of said urging means, and a trip disposed in the path of movement of said retaining means movable to occupy tripping and nontripping positions with relation to said retaining means.

6. In a racing apparatus of the character described, a car, a stationary member sustained on the car, a movable member mounted on said stationary member, a lure arm fixed to the movable member, means for urging the arm and movable member to one extreme position, a latch for securing the movable member in another extreme position against the action of said urging means, and a trip adapted to be engaged by said latch for moving the latter to released position with respect to the movable member.

7. In a racing apparatus of the character described, a car, a disc fixedly secured to the car, a second disc movably sustained on the first disc, an arm fixed to the movable disc, a spring associated with said arm for urging the latter to one extreme position, a spring latch engageable with said discs for retaining the arm in urged position, a gravity latch engaging the discs for securing the arm in another extreme position against the action of said spring, and a trip for moving the gravity latch to released position.

8. A racing apparatus of the character described comprising an endless race track, a conveyor track within the area defined by the race track, a car movable over the conveyor track, a lure supporting arm sustained on the car for movement over the race track, a latching device for said arm in the operative position of the lure, means for releasing said device, and means connected with said arm and the car adapted to automatically retract the arm to an inoperative position for the lure.

9. A racing apparatus of the character described comprising an endless race track, an endless conveyor track within the area defined by the race track, a car movable on said conveyor track, a housing on the conveyor track, said housing having a passage in its side, a lure carrying arm rotatably mounted on the car, said arm being movable in opposite direction in said passage, a lock for said arm in the operative position of the lure, means for releasing said lock, and means for automatically retracting said arm to an inautomatic position of said lure in said housing.

In testimony whereof I have signed my name to this specification.

William C. Creveling.

DEFENDANT'S EXHIBIT H.

390

DEPARTMENT OF COMMERCE.

United States Patent Office

To all persons to whom these presents shall come, Greeting:

This is to Certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the

Letters Patent of
Owen P. Smith,

Number 1,379,224, Granted May 24, 1921,

for

Improvement in Dog-Racing Amusements.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this second day of September in the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States of America the one hundred and fifty-second.

(Seal) Thomas E. Robertson,
Commissioner of Patents.

Attest:
D. E. Wilson,
Chief of Division.

1919

Number (Series of 1915),
321612 (Ex'r's Book) 210 13

Div. 7 Patent No. 1379224

Name Owen P. Smith,

May 24, 1921

of Chicago,

County of

State of Illinois,

Invention Dog Racing Amusements,

Defendant's Exhibit H

Parts of Application Filed	Original		Renewed
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By Commissioner.

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DIVISION OF APP., No.

Patented May 24, 1921

Attorney Chester W. Brown, 160 N. Wells St., Chicago, Ill.

Associate Attorney Geo. C. Shoemaker
Room 509-515 McGill Bldg., City

(No. of Claims Allowed 4, Print Claim in O. G. (Cl. 46-73)

Title as Allowed Dog-Racing Amusement

CHESTER W. BROWN & CO.
Registered Patent Attorneys
Room 510—160 North Fifth Ave.
Chicago

$15 Rec'd.
Sept 4, 1919
C. C. U. S. Pat. Office

Aug. 30th, 1919.

Commissioners of Patents,
Washington, D. C.

Sir:

Herewith please find application of Owen P. Smith, for patent on Dog Racing Amusement, together with first government fee of fifteen Dollars. The drawings are in the same mail under separate cover.

Resp'y,
Chester W. Brown.

Defendant's Exhibit H

321,612 Paper No. 1

Mail Room
Sep 4 1919
U. S. Patent Office

PETITION WITH POWER OF ATTORNEY.

To the Commissioner of Patents:

224

Your petitioner, Owen P. Smith a citizen of the United States and a resident of the City of Chicago, in the County of Cook and State of Illinois, and whose Post Office address is at 764 So. Kenneth Avenue in said City, prays that Letters Patent may be granted to him for the improvements in Dog Racing Amusements set forth in the annexed specification.

And he hereby appoints Mr. Chester W. Brown, of 160 North Wells Street in said City of Chicago, State of Illinois, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at the City of Chicago, in the County of Cook and State of Illinois, this 26th day of August, 1919.

25 cent documentary stamp Owen P. Smith.

SPECIFICATION.

To all whom it may concern:—

Be it known that I, Owen P. Smith, citizen of the United States, residing at the City of Chicago, in the county of Cook and State of Illinois, have invented certain new and useful improvements in Dog Racing Amusements, of which the following is a specification.

My invention relates to amusements in which dogs are induced to race about a track by means of a lure or object conveyed mechanically in advance of them.

The object of my present invention is to provide a suitable track, an elaborate conveyer operated thereon, and a lure or bait to attract the dogs to race thereafter.

Other objects reside in the mechanical construction of the housing for the track and conveyer, the braking mechanism for stopping the said conveyer, the means for mounting and carrying the lure, and the

means for concealing the lure within its den at the end of the race.

With the foregoing, and other objects in view, the invention consists of the arrangement and combination of parts as hereinafter described and claimed, and while the invention is not restricted to the exact details of the construction disclosed herein, yet, for the purpose of illustrating a particular embodiment thereof, reference is had to the accompanying drawings, in which like reference characters designate the same parts in the several views, and in which;

Figure 1 is a plan view of a track for dog racing, with my conveyor installed thereabout.

Figure 2 is a section view of the housing for the track conveyor etc. showing forward end view of the conveyor, brakes removed.

Figure 3 is a top plan view of the conveyer.

Figure 4 is a section view of the conveyer taken along the line 1—1 of Figure 3, showing the brake equipment.

Figure 5 is a detail of the brake releasing mechanism.

Figure 6 is a detail of the door to the den.

Figure 7 is a detail of the door to the conveyer housing.

In the construction of my dog racing amusement, I provide a race track for the dogs, as 30, which may be circular, oval, kite-shaped, or any similar shape, and may be of such size as shall be best suited to the space available, and the purpose in view. This race track is fenced on one side by the low fence 31, and on the other side is inclosed by the housing 31a of the conveyer track, which surrounds said dog race track on the outer side. At some suitable location adjacent to the said track I have installed a raised platform or tower, as 32 within which are installed suitable electric switches, speed controllers, and such other electric mechanism as shall be best suited to control the operation of the conveyor as hereinafter described.

The housing for my conveyor track is constructed with the frame work of posts 1 and 2 arranged around the distance of the track in pairs, and at suitable distance apart. These posts are set in the ground as shown, and the posts 2 extend but a short distance above the surface of the ground, while the posts 1 extend above the top of the housing. The pairs of posts 1 and 2 are suitably connected together by the cross pieces 3, forming ties for supporting the rails for the

conveyor track 4—4, and also for the third rail 5 which carries the electric current for operating the conveyor car hereinafter described. For the purpose of supporting the roof 1a of the housing, and the overhanging side toward the track, I have provided the brackets 6 mounted upon the inner sides of the posts 1 as shown, and I have also provided a truss rod 8 which is attached to the ~~roof~~ 1a ~~and of the bracket 6,~~ passes over the top of the post 1, and is suitably anchored in the ground outside of the housing as at 9.

I have provided boards running lengthwise of the said course for lining said housing, as 12 fastened to the posts 1, 11 attached to the ~~roof~~ 1a ~~brackets 6,~~ 10 suspended from the ends of the ~~roof~~ 1a ~~brackets 6,~~ and 13 secured to the posts 2, these forming a complete inclosure of the said conveyor track and conveyer, with the exception of the space between the boards 10 and 13, where is provided an opening extending the entire circumference of the course for the purpose hereinafter explained.

Mounted to run upon the rails 4, 4 within the housing, I have provided an electric conveyor car, consisting of a frame of side bars 14, connected together by means of the cross bars 15 at their ends, and the additional cross bars 16 near the middle. Upon the cross bars 16 I have mounted a suitable electric motor ~~ref numrl~~ 17 for propelling said conveyer car. Secured at suitable locations upon the side bars 14 I have provided the bearings 18 within which are journaled the axles 19, carrying at the outer ends thereof, the car wheels 21 rigidly attached thereon, and designed to run upon the rails of the track 4, 4. Mounted rigidly upon the axle at the **front** ~~rear~~ I have also provided a wheel as 22 in mesh with a corresponding gear wheel 23 mounted upon the shaft 24 of the motor 17, and designated to impart motion from the motor to the car wheels. At 25 on the side of said car toward the dog race course, I have hinge-mounted the arm 26 extending through the opening between the side boards 10 and 13 of the housing, and out toward the middle of the dog race course. Near the outer end of said arm I have mounted a wheel 28, preferably with rubber tire to rotate on the ground, and support the end of said arm 26. Above said wheel I have provided a platform 27 for mounting upon it the lure 29 in shape of a stuffed rabbit or other suitable object to entice the dogs to chase it. At the point 40 I have connected to

said arm 26 a spring, extending to and attached to the frame as shown, designed to hold the said arm, and the wheel at the end of said arm down with the wheel in contact with the ground. At 41 on the frame of said car I have provided a bracket extending downward, and carrying at its lower end the contact shoe 42 in contact with the third rail 5, said shoe being connected by suitable wiring with the electric motor 17 for conveying the current received from the third rail to said motor.

At 43 I have provided a bracket extending upward from the frame of said conveyer car, and carrying at its upper extremity one or more shoes 44 for contact with the roof boards 11 of the housing, in case the car conveyor should jump off the rails, or for any reason should raise above said rails. Normally said shoes are out of engagement with the roof boards 11.

At 45 on the side bars of said conveyor car I have provided bearings for the brake rod shafts 46. Said brake rod shafts carry the brake shoes 47 positioned in proximity to the car wheels 21 and designed to engage said car wheels when required to brake the speed of said car, and to stop the same at the end of the run. Extending upwardly from said brake rod shaft I have provided the arms 48 having holes 49 bored near their extremity, through which passes the rod 50, threaded at its outer ends, and with nuts thereon, and a compression spring 51 for operating said brakes. The tension of said spring 51 may be increased or diminished by adjusting the nuts as desired.

Midway the length of said brake rod shafts I have provided another arm 52, extending both above and below said brake rod shaft. At the lower end of the arm 52 attached to the forward brake rod shaft, I have provided a rectangular opening, and a hole suitable for receiving a pin as 53 to hold the brake operating and releasing bar 54. At the rear the arm 52 is also provided with a rectangular opening at its lower end for receiving said brake releasing bar 54. Said brake releasing bar is constructed with several holes at its forward end for suitable adjustment by the pin 53, and at its rear end it is provided with a notch 55 for engaging the arm 52 at the rear, and when so engaged, holding the brake shoes 47 out of engagement with the car wheels. At a suitable point 60 in the course of the track, a trip is provided for engaging the rear curved end of the brake releasing bar 54, and disengaging it

from the arm 52 at the rear of said car, permitting the springs 51 to press the shoes 47 into engagement with the car wheels, and by the friction reduce the speed of said car, and bring it to a stop after the electric power is shut off. (7) A[1] I have also provided rings as 55[a] on the lower side of the frame of said car, designed to engage hooks mounted in the track at 56 for stopping said car at said point and holding it against forward movement in case the brakes shall for any reason be insufficient to bring the car to a stand still.

wrong " A Insert A[1]

At 33 in the course of my track, I have provided a switch, with a track extending to the den or enclosure where the lure is to be concealed after the race. On the side of the housing toward the track at the point 33 I have provided a side door, mounted upon hinges as shown at 34. During the race said door 34 is held open by means of the catch 35, but as the race is completed, and the car conveyer passes over the switch in entering the den, it trips the said catch, and closes said door against the admission of the dogs. I have also provided a second door, as 36 at the entrance to the den, which is likewise held open during the race by the catch 37. As the car and lure pass through said door into the den, the catch is released by the trip 38 as shown.

At a suitable point, as 57, a cage is provided for retaining the dogs until the race is ready to be run. At 58 a judge's stand is provided, and in front of said judges stand is provided a wire as usually employed on race courses for determining the winner. A grand stand may be provided as at 59 for accommodation of the audience.

In the operation of my said device, the conveyor car with the lure is backed out upon the track across the switch 33 and the car is started slowly around the course in the direction indicated by the arrow. The dogs are retained within the cage until the lure passes opposite said cage, and at a pre-determined time the barrier retaining said dogs is raised, and the dogs are simultaneously released, to pursue said lure. The lure is then carried around the track by the electric conveyor car, (or may be carried twice or more around in smaller tracks) and usually as the lure comes down the home stretch, the power is cut off, and the car permitted to run by its own momentum, with the dogs chasing. As the dogs pass under the wire, the

judges decide which are the winners. When the race is finished by passing once or more around the course, the switch 33 is thrown to sidetrack the conveyor car onto the track leading to the den, and the lure is carried through the trap doors 34 and 36, which are closed behind the conveyor car and the lure, and thus conceal the lure from the dogs and prevent their further pursuit thereof. As the car passes the trip 60, the brake mechanism in released, and the brakes are applied to the car wheels, to bring said car to a stop within the den. In case the car does not stop before reaching the hooks 56, the rings depending from the lower side of the frame engage with said hooks and thus bring the car to a full stop.

Having thus described my invention, what I claim and desire to secure by Letters Patent, is as following:—

Pinard " A — 1. In a dog racing amusement, the combination of a race course suited for dogs, ~~and~~ a mechanical conveyor for carrying the lure or quarry in advance of the dogs, A^2

Insert A^2 Sub B^1 Walsh — 2. In an amusement, a race course suited for dogs, a mechanical conveyor at one side of said course, a lure carried midway of said course by said conveyor in advance of the racing dogs, A^3

Insert A^3 Walsh " A A^3 " A — Insert A^4 — 3. In an amusement, the combination of a race track suited for dogs, a ~~covered~~ rail track adjacent said course, a conveyor car mechanically operated upon said track, an arm attached to said car extending midway of said course, a wheel rotatably mounted on said arm, ~~and~~ a lure mounted on said arm, A^4

2. ~~C 4~~. In an amusement, the combination of a race course suited for dogs, a covered rail track adjacent said course on one side, a conveyor car mechanically operated upon said track, a horizontally extending arm hinged to said car extending midway of said course, a wheel rotatably mounted near the end of said arm, and resting upon the ground, a platform supported by said arm and a lure or quarry mounted upon said platform for attracting the dogs.

3. ~~C 5~~. In a dog racing amusement, the combination of a race course suited for dogs, a housing adjacent said course on one side having an opening in the side toward the course, a rail track within said housing, an electrically operated car within said housing for operation upon said rail track, an electric conductor within said housing, a shoe carried by the car for

contact with said conductor, friction brakes adjacent the wheels of said car, means for holding said brakes out of contact with said wheels, means on the track for releasing said brakes, a hinged arm extending horizontally from said car through the opening in the side of the housing, a wheel mounted upon said arm for rotation upon the ground, a platform also mounted upon said wheel and a lure mounted upon said platform.

4. ~~6~~ 6. In a Dog Racing Amusement, a race course suitable for dogs to race upon, a covered two rail track along one side of said course having a lateral opening on the side toward said course, a mechanically operated car for operation upon said track, an arm carried by said car extending through said opening, a wheel support for said arm resting upon said course, a decoy or lure mounted upon said arm, a spring for holding said wheel in contact with the ground, brake mechanism adjacent the wheels of the car, a trip along said track for releasing said brakes, springs for applying said brakes to said car wheels, when so released, a shoe carried by the car in proximity to the roof of said covering, for engagement with said roof whenever the car rises off the track rails, rings depending from the car and hooks at the end of the spur track for engaging the rings and stopping the car.

rej " A Canceled per B " A

7. In a dog racing amusement, the combination of a race course for dogs, a rail track on one side of said course, an electric car operatively mounted to run upon said track to carry a lure or decoy, a covering for said track having an opening in the side toward the course, said covering being ~~supported upon~~ provided with supporting posts, and lined on the inside with boards, and a bracket adjacent the roof for supporting said roof and the overhanging side toward the track.

Moss " A " A

8. In a dog racing amusement, ~~extending around the~~ race course a track, mounted upon said track, a lure mounted upon said car, a covering for said track having at one side with an opening, a truss rod or wire for supporting the roof and the overhanging side toward said opening, and a lining for said covering.

Defendant's Exhibit H

5556

In testimony Whereof, I have hereunto set my name in the presence of a witness.

Witness:
M. J. Paddon.

Owen P. Smith.

OATH.

State of Illinois,
County of Cook. } ss.

Owen P. Smith, the above named petitioner, being sworn, deposes and says; that he is a citizen of the United States, and resident at 764 South Kenneth Avenue in the City of Chicago, in the County of Cook and State of Illinois; that he verily believes himself to be the original, first and sole inventor of the improvement in

Dog Racing Amusements

described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application, and that no application for patent on said improvement has been filed by him or his representatives or assigns in any country foreign to the United States.

Owen P. Smith.

Sworn to and subscribed before me this 27th day of August, 1919.
(Seal)

Mary J. Paddon,
Notary Public.

My Commission Expires May 10, 1923.

Defendant's Exhibit H

Div. 7 Room 312 2—260 V Paper No. 2

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR.
United States Patent Office
Washington

Oct. 3, 1919.

Chester W. Brown,
160 N. Wells St.
Chicago, Ill.

U. S. Patent Office
Oct. 3, 1919
Mailed

Please find below a communication from the Examiner in charge of the application of O. P. Smith, filed Sept. 4, 1919, Dog Racing Amusements, Serial No. 321,612.

James T. Newton,
Commissioner of Patents.

The drawings are informal in that they are pale and rough in parts. The drawings can be corrected and new drawings will not be admitted.

Page 3, line 6, the housing should be designated by a reference numeral and so referred to. Line 27, rod 8 does not run to bracket 6 but to the roof which should be designated by a reference numeral. Lines 32 and 33. "brackets 6" is objected to for reasons stated above.

Page 4, line 11, 9 the motor should be designated by a reference numeral. Line 14, "front" should be rear. Line 21, "28" should be inserted after "wheel".

Page 5, line 13, reference numeral 49 should be shown on the drawing. Line 4 from the bottom, the disclosure of trip 60 is objected to as insufficient. A better disclosure is required.

Page 6, line 2, "55" is objected to. 55 has already been applied to notch in 54.

Claim 1 is rejected on
Pinard 362,396, May 3, 1887 (46-73).

Claims 2 and 3 are rejected on
Walsh, 611,876, Oct. 4, 1898 (46-73).

Claims 4, 5 and 6 are allowable.

Claim 7, cancel the comma in line 3. Line 6, the posts should be positively included. The claim is rejected as there is thought to be no patentable relation between the

devices as described in lines 1 to 4 and the covering as described in the rest of the claim.

Claim 8 is rejected on

Mosa (Brit.) 9058, Apr. 29, 1896 (1 sheet) (46-73).

C. G. Jarboe,
Examiner.

Willis
Draftsman Div.
9/24/20

ASSOCIATE POWER OF ATTORNEY.

Application Div.
Sep. 24, 1920
U. S. Patent Office

U. S. Patent Office
Sep. 25, 1920
Division VII

Washington, D. C., June 25, 1920

Hon. Commissioner of Patents,

Sir:

Please recognize Geo. Shoemaker, of ~~918 F. Street~~ **Rm. 509-515 McGill Bldg.** Northwest, Washington, D. C., as my associate in the matter of the application of Owen P. Smith for an improvement in Dog Racing Amusements filed September 4, 1919 Serial No. 321,612 Room No. 312.

Respectfully,
Chester W. Brown.

(Documentary Seal)

Application Div.
Sep 24 1920
U. S. Patent Office

U. S. Patent Office
Sep 25 1920
Division VII

Amendment A Paper No. 4

Division 7, Room 312,
Owen P. Smith,
Dog Racing Amusements,
Serial No. 321,612,
Filed September 4, 1919.

Washington, D. C., September 22, 1920.

Honorable Commissioner of Patents.

Sir:

amendment is hereby made as follows:

In response to office letter of October 3, 1919,

Defendant's Exhibit H

Page 3, line 6, after "housing" insert —31a—

Same page, line 24, after "roof" insert —1a—

Same page, lines 27 and 28, strike out "end of the bracket 6" and insert —roof 1a—

Same page, line 32 strike out "brackets 6" and insert —roof 1a—

Same page, line 33, strike out "brackets 6" and insert —roof 1a—

Page 4, line 9, after "motor" insert —17—

Already Same page, line 14, strike out "front" and insert —rear—

Same page, line 21, after "wheel" insert —28—

Page 6, line 2, after "off" insert The curves terminal portion of the bar 54 extends below the rest of the bracket mechanism and into the path of the projecting trip 60 so as to be engaged and lifted by the same. The curved terminal portion of the bar 54 presents a lower convex face to the trip and is lifted by the same sufficiently to cause the bar 54 to release the member 52 and permit the brake mechanism to operate. A1

Same page, line 2, change "55" to —55a—

Claim 1, line 2, strike out "and" and insert a comma.

Same claim at the end of the last line change the period to a comma and insert —and means extending around the race course for concealing the mechanical conveyor.— per B A2

Claim 2 at the end of the last line, change the period to a comma and insert: —and a housing extending around the race course and receiving and concealing the mechanical conveyor.— per B A3

Claim 3, line 2, strike out "covered"

Same claim, last line, strike out "and"

Same claim at the end of the last line change the period to a comma and insert —and a casing extending around the race course and receiving and concealing the track and the conveyor car and provided with a a longitudinal opening through which the said arm extends.— A4

Defendant's Exhibit H

Claim 7, line 3, strike out the comma.

Same claim, lines 5 and 6, strike out "supported upon" and insert —provided with supporting—

Claim 8, line 1, after "amusement" insert a comma and the words —a race course—

Same claim and line after "track" insert —extending around the race course—

Same claim, line 3, after "having" insert —at—

REMARKS.

The Chief Draftsman has been instructed to correct the drawing and also to apply the reference numerals to which attention has been called and an amount in accordance with the oral estimate of the Chief Draftsman has been paid into the Patent Office to cover the cost of the correction. The numeral 49 however, is shown applied in Figure 3 of the drawing at each end thereof and at the upper and lower portions of the same and it is thought that these are the only points where the said numerals would appear.

All the requirements of the examiner relative to the correction of the have been complied with.

The specification has also been amplified to set forth more fully the construction and operation of the trip and the coacting portion of the brake mechanism and it is thought that this construction will be thoroughly understood. The bar 54 is provided with a curved terminal portion extending below the brake mechanism and presenting a lower convex face to the projecting trip 60 which is adapted to lift the bar by engaging the said curved portion for releasing the brake mechanism to permit an application of the brakes. It is hoped that further objection to the disclosure of the trip will be waived.

The patent to Pinard No. 362396 shows a rope and a drum on which the rope is adapted to be wound for drawing the bait along a course. Claim 1 has been amended to include the means for concealing the mechanical conveyor and is believed to be clearly distinguished from the patent to Pinard as it would be impossible with this construction to conceal the mechanical conveyor, the drum and the rope without concealing the lure or bait.

The patent to Walsh No. 611876 shows the race

Defendant's Exhibit H

course surrounded by track on which operates a motor device or car having projecting rods extending longitudinally in opposite directions and adapted to cooperate with a pair of race courses or race tracks. Claims 2 and 3, against which the Walsh patent was cited have been amended to include the housing extending around the track and concealing the mechanical conveyor. This element is not present in the Walsh patent.

Claim 7 has been amended as suggested.

Claim 8 has been amended to include the race course and to define the relation of the track to the race course. As neither the British patent cited nor the other references disclosed applicant's housing extending around the race course and concealing the track and the car, it is thought that claim 8 which has been limited to this construction is fully distinguished from the art cited.

It is believed that the amendment should place the application in condition for favorable consideration.

Respectfully submitted,
Geo. C. Shoemaker,
Attorney for Applicant.

Letter to office

$5.00 Rec'd
Sep. 29, 1920
C. C. U. S. Pat. Office
Division 7, Room 312,
Owen P. Smith,
Dog Racing Amusements,
Serial No. 321,612,
Filed September 4, 1919.

Washington, D. C., September 22, 1920.

Honorable Commissioner of Patents.

Sir:

The Chief Draftsman is respectfully requested to apply the reference characters 1^a, 17, 31^a and 55^a to the drawings as has been indicated in pencil thereon to comply with the requirement of the examiner.

The Chief Draftsman is also respectfully requested to correct the drawing which has been held informal on account of certain lines being pale and rough in parts.

Defendant's Exhibit H

The amount of $5.00 in accordance with the oral estimate of the Chief Draftsman is transmitted herewith to cover the cost of the corrections.

Respectfully submitted,
Geo. C. Shoemaker,
Attorney for Applicant.

Div. 7 Room 312 2— V Paper No. 6

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

Oct. 21, 1920.

Geo. C. Shoemaker
McGill Bldg.,
Washington, D. C.

U. S. Patent Office
Oct. 21, 1920
Mailed

Please find below a communication from the Examiner in charge of the application of O. P. Smith, filed Sept. 4, 1919, Dog Racing Amusement Serial No. 321,612

R. F. Whitehead,
Commissioner of Patents.

Case reconsidered as amended Sept. 24, 1920.

The office was in error in stating that "page 4, line 14, 'front' should be **rear.**" The statement should have been that "rear" should be **front.**

While reference numeral 49 was found the holes indicated thereby were not seen.

Claims 1, 2 and 3 are **rejected on either Walsh or Moss both of record. Moss is provided with a housing** and it would not be invention to provide Walsh with one.

Claims 4, 5 and 6 stand allowed.

Claims 7 and 8 are rejected as drawn to an old combination as shown by the British patent to Moss of record. If applicant has invented a separate housing structure it should be so claimed in a separate application. There is no novel cooperation between the housing structure in which the car runs and the remaining elements of the device.

C. G. Jarboe,
Examiner.

Willis

Defendant's Exhibit H

Amendment B 7

Application Div.
Nov. 10 1920
U. S. Patent Office
Div. 7, Room 312,
O. P. Smith,
Dog Racing Amusement,
Filed Sept. 4, 1919,
Serial No. 321,612.

U. S. Patent Office
Nov. 11 1920
Division VII

November 9, 1920.

Hon. Commissioner of Patents.
Washington, D. C.

Sir:—

Responding to the Office Letter of October 21, 1920, amendment is hereby made as follows:—

Page 4, line 14, strike out "rear" and insert: front.

Strike out claims 1, 2 and 3 and insert:—

1. In a dog racing amusement, the combination of a race course suited for dogs, a mechanical conveyor for carrying a lure or quarry in advance of the dogs, and a relatively fixed housing extending around the race course and receiving and concealing the mechanical conveyor.

2. In a dog racing amusement, a race course suited for dogs, a mechanical conveyor at one side of the race course, a lure carried by the mechanical conveyor and adapted to be maintained in advance of the racing dogs, and a casing extending around the race course at one side thereof and receiving and concealing the conveyor.

B¹ Cancel per C

1. C 3. In a dog racing amusement, a race course suited for dogs, a casing extending around the outer side of the race course and provided with a longitudinal opening, a mechanical conveyer including a track extending around the race course and located within the casing, and a conveyer car mechanically operated upon said track and provided with an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure, and a wheel rotatably mounted on and supporting the arm at the projecting end thereof.

Strike out claims 7 and 8.

Defendant's Exhibit H

REMARKS.

The specification has been amended as suggested and the attention of the Examiner is called to Figure 3 of the drawing in which the arms 48 are shown in an inclined position. The leader lines of the numerals 49 extend to apertures and the outer walls of the apertures are shown in this Figure at each end of the car. It is thought that this is a sufficient showing and it is hoped that further illustration thereof will not be required. The construction, it is believed, may be clearly understood from Figures 3 and 4.

Claims 1 to 3 inclusive, have been drawn to present a fair copy and to define clearly the arrangement of the casing around the race track. Applicant is unable to find such a casing in the British patent to Moss and the Examiner is respectfully requested to apply the references to the extent of pointing out where this housing is shown. The part 15 in the British patent, is the artificial rabbet and by reference to the specification and drawings, the track is apparently exposed centrally of the race course. With this construction it is not clear how the housing of the character employed by applicant could be used in the Moss patent. If Moss fails to show this casing or housing, claims 1 to 3 inclusive are not met in terms or in substance and are entitled to a favorable consideration.

Claims 7 and 8 have been canceled in view of the requirement for division.

Respectfully submitted,
Geo. C. Shoemaker,
Attorney for applicant.

Defendant's Exhibit H

Div 7 Room 312 2—260 V Paper No. 8

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR.

United States Patent Office

Washington

Feb. 28, 1921.

Geo. C. Shoemaker
McGill Bldg.
Washington, D. C.

U. S. Patent Office
Feb. 23, 1921
Mailed

Please find below a communication from the Examiner in charge of the application of O. P. Smith, filed Sept. 4, 1919, Dog Racing Amusement Serial No. 321,612

M. H. Coulston,
~~R. F. Whitehead,~~
Acting Commissioner of Patents.

Case reconsidered as amended Nov. 10, 1920.

Claims 1 and 2 are again rejected on Moss. The housing of Moss is member 28.

The remaining claims appear allowable.

C. G. Jarboe,
Examiner.

C. G. J.—W. J. W.

Defendant's Exhibit H

Amendment C Paper No. 9

Application Div.
Mar. 14, 1921
U. S. Patent Office
Div. 7, Room 312,
Owen P. Smith,
Dog Racing Amusement,
Filed September 4, 1919,
Serial No. 321,612.

U. S. Patent Office
Mar. 15, 1921
Division VII

Washington, D. C., March 12, 1921.

Honorable Commissioner of Patents.

Sir:

Responsive to office letter of February 28, 1921, amendment is hereby made as follows:

Strike out claims 1 and 2, and adjust the numerals of the remaining claims.

REMARKS.

The rejected claims have been cancelled and it is hoped that the case will be passed to issue at an early day.

Respectfully submitted,
Geo. C. Shoemaker,
Attorney for Application.

Defendant's Exhibit H

Div. 7 V

2—481 Serial No. 321,612

Address only
The Commissioner of Patents
Washington, D. C.

DEPARTMENT OF THE INTERIOR.
United States Patent Office
Washington

March 17, 1921.

Owen P. Smith

Sir: Your Application for a patent for an Improvement in

Dog Racing Amusement

filed Sept. 4, 1919, has been examined and allowed.

The final fee, Twenty Dollars, must be paid not later than Six Months from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed with an additional fee of $15, under the provisions of Section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you will also send, Distinctly and Plainly Written, the name of the Inventor, Title of invention, and serial number as above given, Date of Allowance (which is the date of this circular), Date of Filing, and, if assigned, the Names of the Assignees.

If you desire to have the patent issue to Assignees, an assignment containing a Request to that effect, together with the Fee for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the patent uncertified copies of the drawings and specifications may be purchased at the price of Ten Cents Each. The money should accompany the order. Postage stamps will not be received.

Final fees will Not be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully,
M. H. Coulston,
~~R. F. Whitehead,~~
Commissioner of Patents.

Geo. C. Shoemaker
McGill Bldg.
Washington, D. C.

IN REMITTING THE FINAL FEE GIVE THE SERIAL NUMBER AT THE HEAD OF THIS NOTICE.

UNCERTIFIED CHECKS WILL NOT BE ACCEPTED.

Defendant's Exhibit H

2—3

$20.00 Rec'd.
Apr. 26, 1921 G
C. C. U. S. Pat. Office

Memorandum
of
Fee Paid at United States Patent Office.

(Be careful to give correct Serial No.)

Serial No. 321,612 19..
Inventor: Owen P. Smith
Patent to be Issued to As per record
Name of Invention, as Allowed: Dog Racing Amusement
Date of Payment: April 26, 1921
Fee: $20.00
Date of Filing: Sept. 4, 1919
Date of Circular of Allowance: March, 17, 1921

The Commissioner of Patents will please apply the accompanying fee as indicated above.

Geo. C. Shoemaker,
Attorney.

Send Patent to
Geo. C. Shoemaker,
McGill Bldg.,
Wash. D. C.

Div. 7 Room 312 2—254 V Paper No. 10

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

May 14, 1921.
Examiner's Amendment.

Geo. C. Shoemaker
McGill Bldg.
Washington, D. C.

Please find below a communication from the Examiner in charge of the application of O. P. Smith, filed Sept. 4, 1919, Dog Racing Amusement Serial No. 321,612

Thomas E. Robertson,
~~R. F. Whitehead,~~
Commissioner of Patents.

Defendant's Exhibit H

In accordance with the provisions of Order No. 2308, dated March 12, 1917, which reads in part as follows:

* * * * * * *

Obvious informalities in the application may be corrected by the examiner, but said correction must be in the form of an amendment, approved by the Principal Examiner in writing, placed in the file, and made a part of the record. The changes specified in the amendment will be entered by the clerk in the regular way.

* * * * * * *

the changes, hereinafter specified, are made by the examiner in the application above identified.

Should these changes not be satisfactory to the applicant, appropriate amendment may be proposed under the provisions of Rule 78, provided the specification has not been printed.

The application has been amended as follows:

Page 4, line 99 21, change "near" to Near.

C. G. Jarboe,
Examiner.

W.J.W.

Mail Room
Aug 7 1926
U. S. Patent Office

UNITED STATES DISTRICT COURT
Northern District of Ohio (Eastern Division)

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L. ....), you are advised that there was filed on the 5th day of August, 1926, in this court an action, suit, or proceeding No. 1982, entitled:

Name Owen P. Smith, Plaintiff,
Address Miami, Florida,

versus

Name W. N. Steinman, et al. Partners, etc., Defendant,
Address 204 Medford Bldg. 21 Main St.,
Dft brought upon the following patents:

Defendant's Exhibit H

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sep. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	do
3	1,410,842	Mch. 28, 1922	do
4	1,507,439	Sep. 2, 1924	do
5	1,507,440	Sep. 2, 1924	do
6	1,591,569	July 6, 1926	do

In the above-entitled case, on the ..... day of ....., 192 , the following patents have been included by ..... (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In witness whereof I have affixed my hand this 5th day of August, 1926, at Cleveland, Ohio.

B. C. Miller,
Clerk of said Court.
By C. A. Wilder, Deputy Clerk.

UNITED STATES DISTRICT COURT
Southern District of Ohio

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L. ....), you are advised that there was filed on the 30th day of September, 1926, in this court an action, suit, or proceeding No. 464, entitled:

Defendant's Exhibit H

Name Owen P. Smith, Plaintiff,
Address Miami, Dade County, Florida

versus

Name Franklin Kennel Club, Limited, Edward H. McGrath, Thomas H. Buxton, Edward Siefert, William B. Wheeling, Reinhart Wilke, and Robert Dienst, Defendants,
A[5]
Address Grove City, Franklin County, Ohio
brought upon the following patents:

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	Owen P. Smith
3	1,410,842	March 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith
5	1,507,440	Sept. 2, 1924	Owen P. Smith
6	1,591,569	July 6, 1926	Owen P. Smith

In the above-entitled case, on the ..... day of ....., 192 , the following patents have been included by.....
(insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In witness whereof I have affixed my hand this 4th day of October, 1926, at Columbus, Ohio.

Harry F. Rabe,
Clerk of said Court.

Defendant's Exhibit H

Mail Room
Dec 4 1926
U. S. Patent Office

UNITED STATES DISTRICT COURT
Eastern District of Louisiana

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L. ....), you are advised that there was filed on the 1st day of December, 1926, in this court an action, suit, or proceeding No. 18,596, entitled:
Name Owen P. Smith, Plaintiff,
Address Miami, Florida,

versus

Name American Electric Rabbit Racing Assn. Inc., Et Als, Defendants,
Address New Orleans, La.
brought upon the following patents:

	Patent No.	Date of Patent	Patentee
1	1038504	Sept. 10, 1912	Owen P. Smith
2	1379224	May 24th, 1921	do
3	1410842	March 28, 1922	do
4	1507439	Sept. 2, 1924	do
5	1507440	Sept. 2, 1924	do
6	1591569	July 6, 1926	do

In the above-entitled case, on the ..... day of ....., 192 , the following patents have been included by..... (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

Defendant's Exhibit H

In witness whereof I have affixed my hand this 2nd day of December, 1926, at New Orleans, La.

H. J. Carter,
Clerk of said Court.

Mail Room
Jan 15 1927
U. S. Patent Office

UNITED STATES DISTRICT COURT
Eastern District of Louisiana

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L. ....), you are advised that there was filed on the 12th day of January, 1927, in this court an action, suit, or proceeding No. 18,651, entitled:
Name Owen P. Smith, Plaintiff,
Address Miami, Dade County, Florida.

versus

Name Louisiana Greyhound Club, Incorporated, et als, Defendants,

Address Jefferson Parish, Louisiana.
brought upon the following patents:
B⁵

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	do
3	1,410,842	Mar. 28, 1922	do
4	1,507,439	Sept. 2, 1924	do
5	1,507,440	Sept. 2, 1924	do
6	1,591,569	July 6, 1926	do

In the above-entitled case, on the ..... day of ....., 192 , the following patents have been included by.....
(insert amendment, answer, cross bill, or other pleading):

Defendant's Exhibit H

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In witness whereof I have affixed my hand this 13th day of January, 1927, at New Orleans, Louisiana.

H. J. Carter,
Clerk of said Court.

Mail Room
Jul 14 1927
U. S. Patent Office

UNITED STATES DISTRICT COURT
Northern District of Illinois

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L. ....), you are advised that there was filed on the 8th day of June, 1927, in this court an action, suit, or proceeding No. 7164, entitled:
Name Hannah M. Smith, etc., Plaintiff,
Address Dade County, Florida.

versus

Name Ogden Kennel Club, et al, Defendant,
Address Chicago, Illinois.
brought upon the following patents:

8

Defendant's Exhibit H

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	Owen P. Smith
3	1,410,842	Mar. 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith
5	1,507,440	Sept. 2, 1924	Owen P. Smith
	1,591,569	July 6, 1926	Owen P. Smith

In the above-entitled case, on the ..... day of ....., 192 , the following patents have been included by..... (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In witness whereof I have affixed my hand this 12th day of July, A. D. 1927, at Chicago, Illinois.

Charles M. Bates,
Clerk of said Court.

Mail Room
July 14 1927
U. S. Patent Office

UNITED STATES DISTRICT COURT
Northern District of Illinois

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L. ....), you are advised that there was filed on

Defendant's Exhibit H

the 8th day of June, 1927, in this court an action, suit, or proceeding No. 7165, entitled:

Name Hannah M. Smith, etc., Plaintiff,
Address Dade County, Florida.

versus

Name Edward H. Wait, et al., Defendant,
Address Chicago, Illinois.
brought upon the following patents:
T[s]

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	Owen P. Smith
3	1,410,842	Mar. 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith
5	1,507,440	Sept. 2, 1924	Owen P. Smith
	1,591,569	July 6, 1926	Owen P. Smith

In the above-entitled case, on the ..... day of ....., 192 , the following patents have been included by.....
(insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In witness whereof I have affixed my hand this 12th day of July, A. D. 1927, at Chicago, Illinois.

Charles M. Bates,
Clerk of said Court.

Defendant's Exhibit H

Mail Room
Jul 23 1927
U. S. Patent Office

DISTRICT COURT OF THE UNITED STATES
Southern District of Illinois

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L. 392), you are advised that there was filed on the 21st day of July, 1927, in this court an action, suit, or proceeding No. 616, entitled:

Name Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, Plaintiff,
Address Miami, Florida.

versus

Name Peoria Kennel Club, a Corporation of Illinois, et al., Defendants,
Address Peoria, Illinois.

brought upon the following patents:

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	" " "
3	1,410,842	March 28, 1922	" " "
	1,507,439	Sept. 2, 1924	" " "
4	1,507,440	" " "	" " "
	1,591,569	July 6, 1926	" " "
5	1,630,811	May 31, 1927	" " "
	1,630,812	" " "	" " "

In the above-entitled case, on the 21st day of July, 1927, the following patents have been included by ..... (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

Defendant's Exhibit H

In the above-entitled case the following decision has been rendered or decree issued:

. . . . . .

. . . . . .

In witness whereof I have affixed my hand this 26th day of July, 1927, at Peoria, Illinois.

S. T. Burnett,
Clerk of said Court.

Mail Room
Aug 28 1927
U. S. Patent Office

UNITED STATES DISTRICT COURT
Southern District of Ohio

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L. . . . .), you are advised that there was filed on the 19th day of August, 1927, in this court an action, suit, or proceeding No. 485 Eq., entitled:

Name Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, Plaintiff,
Address County of Dade, Florida

versus

Name Springdale Amusement Park, Limited et al, Defendant,
Address near the City of Hamilton, Ohio,
brought upon the following patents:

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10th, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	Owen P. Smith
3	1,410,842	March 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith
	1,507,440	" "	Owen P. Smith
5	1,591,569	July 6, 1926	Owen P. Smith
	1,630,811	May 31, 1927	Owen P. Smith
	1,630,812	May 31, 1927	Owen P. Smith

Defendant's Exhibit H

In the above-entitled case, on the ..... day of ....., 192 , the following patents have been included by..... (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In witness whereof I have affixed my hand this 19th day of August 1927, at Cincinnati, Ohio.

Harry F. Rabe,
Clerk of said Court.
By T. V. Lamb, Deputy.

DEFENDANTS' EXHIBIT "H"

SMITH PATENT NO. 1,379,224

MAY 24, 1921.

O. P. SMITH.

DOG RACING AMUSEMENT.

APPLICATION FILED SEPT. 4, 1919.

1,379,224.

Patented May 24, 1921.

3 SHEETS—SHEET 1.

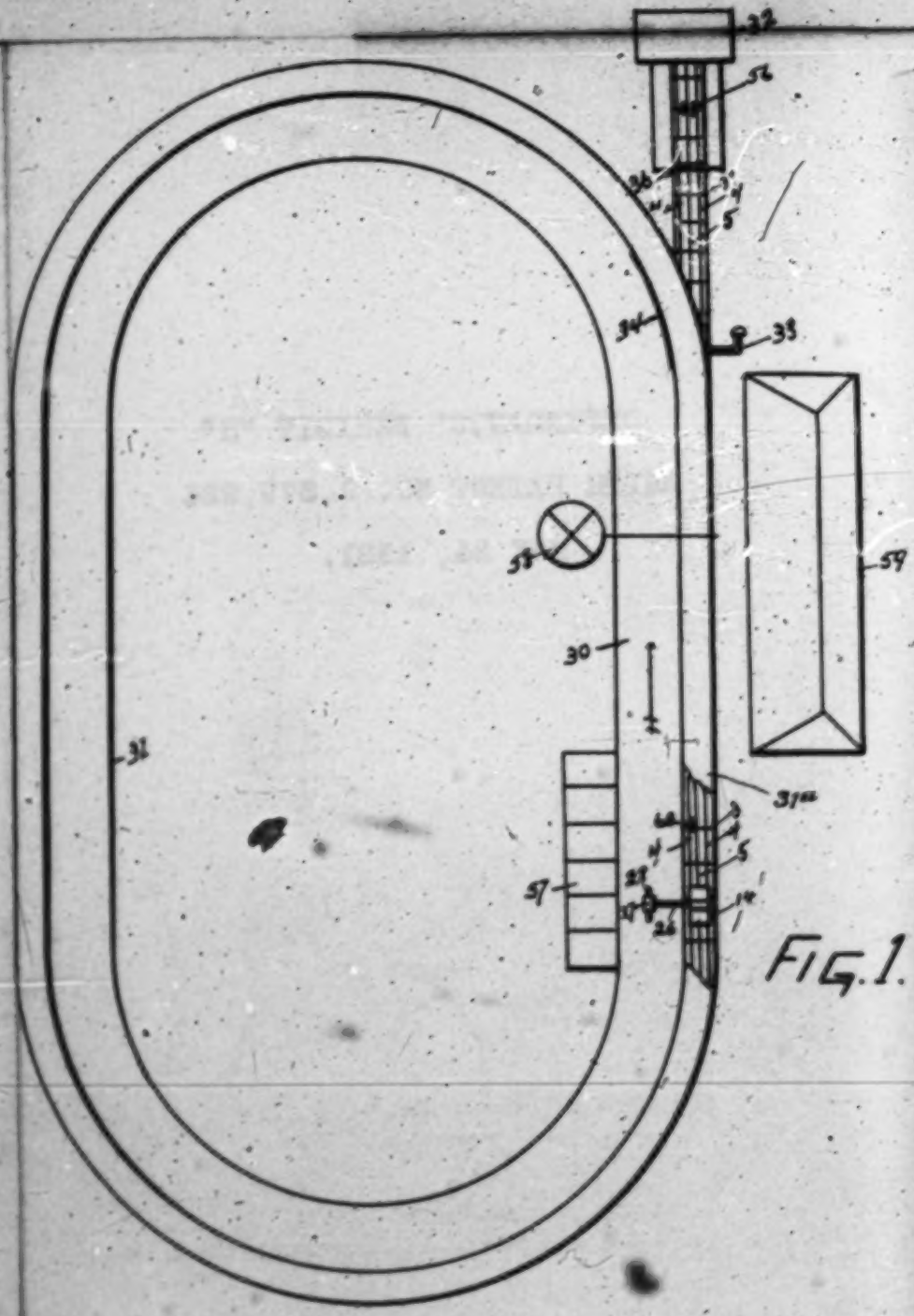


FIG. 1.

Witnesses

Omer P. Smith

By Chester W. Brown

his Attorney

O. P. SMITH.

DOG RACING AMUSEMENT.

APPLICATION FILED SEPT. 4, 1919.

1,379,224.

Patented May 24, 1921.

2 SHEETS—SHEET 2.

FIG. 2.

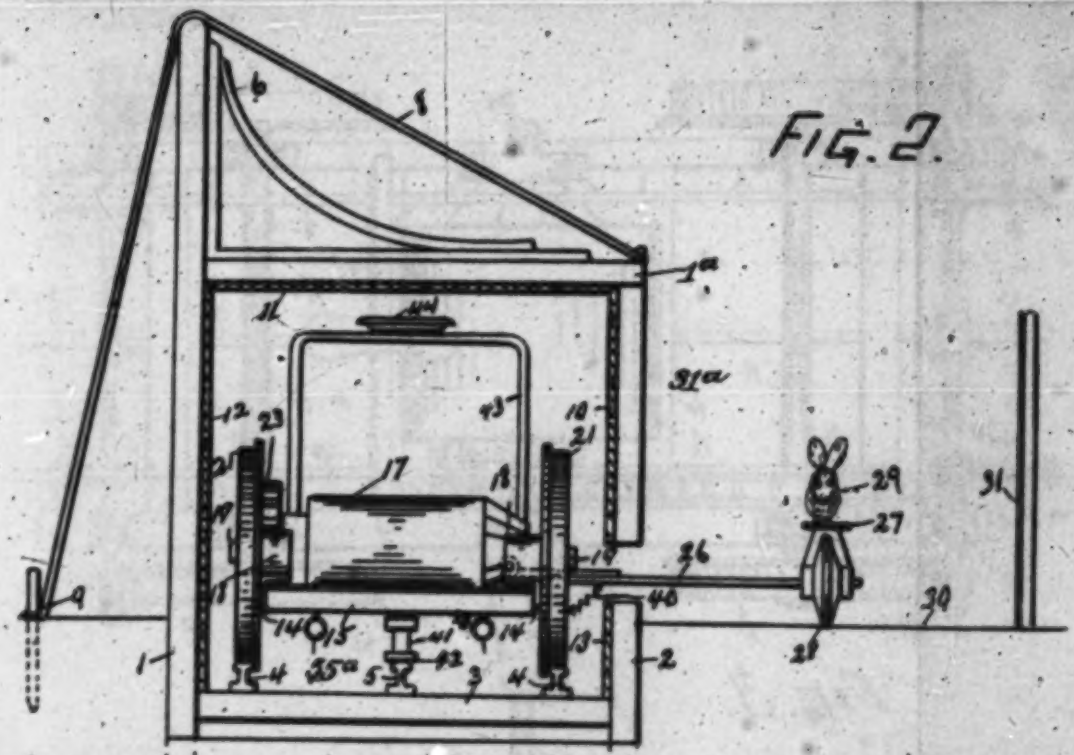
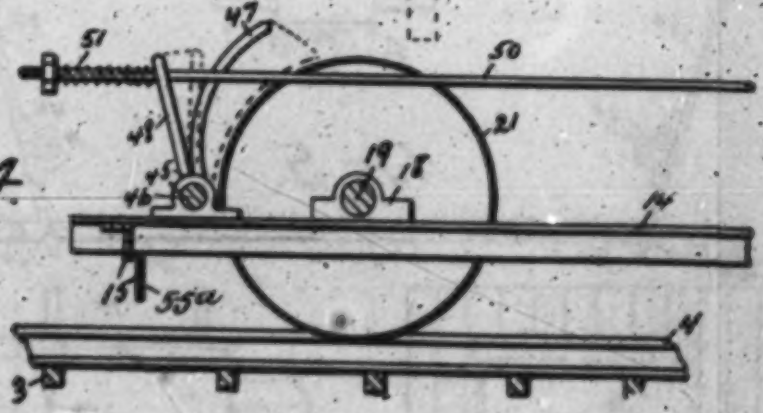


FIG. 4.



Oscar P. Smith

By Chester W. Brown

Its Attorney

O. P. SMITH.

DOG RACING AMUSEMENT.

APPLICATION FILED SEPT. 4, 1919.

1,379,884.

Patented May 24, 1921.

3 SHEETS—SHEET 3.

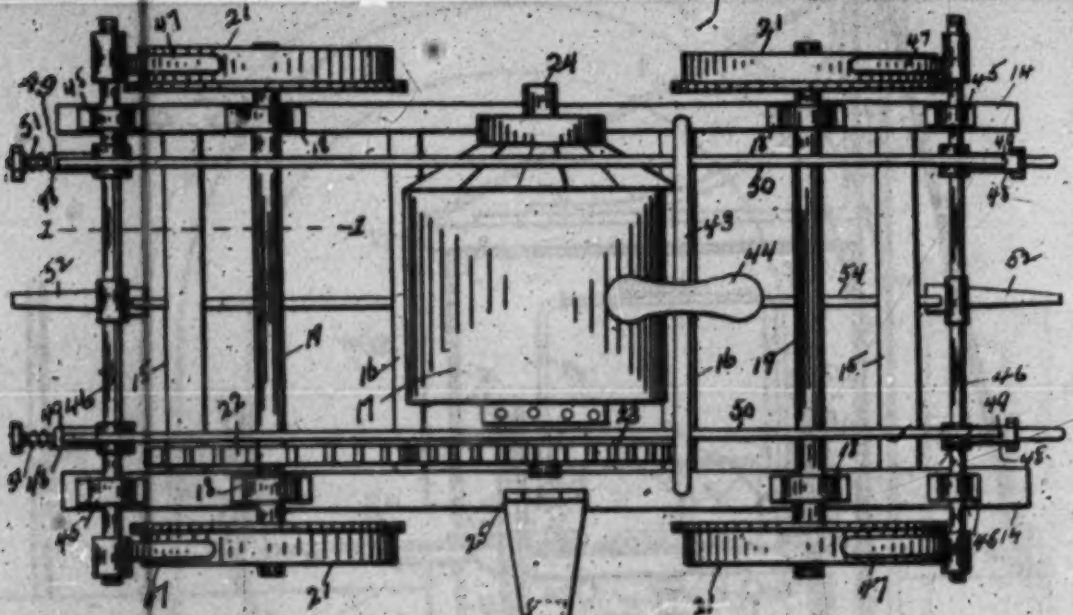
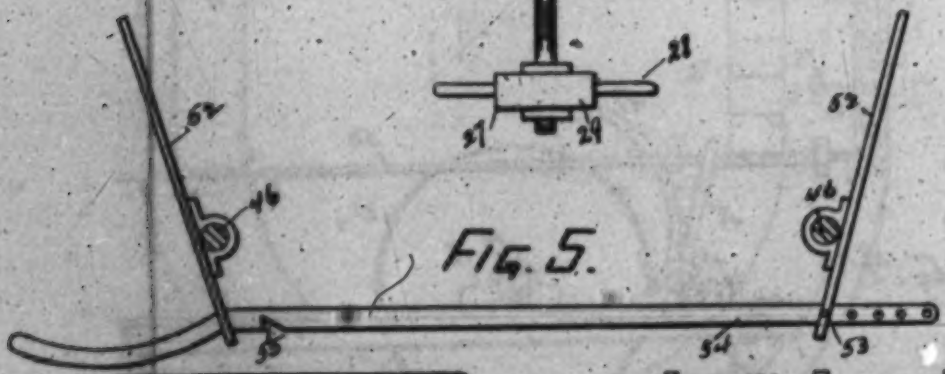


FIG. 3.

FIG. 5.



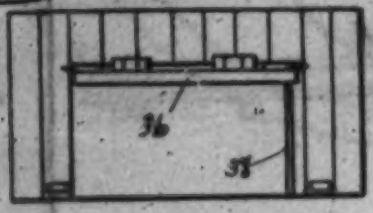


FIG. 6.

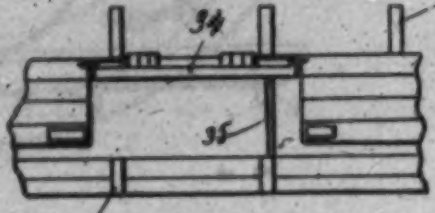


FIG. 7.

Owen P. Smith

By Chester W. Brown

His Attorney

United States Patent Office

Owen P. Smith, of Chicago, Illinois

Dog-racing Amusement

1,379,224. Specification of Letters Patent. Patented May 24, 1921

Application filed September 4, 1919. Serial No. 321,612

To all whom it may concern:

Be it known that I, Owen F. Smith, a citizen of the United States, residing at the city of Chicago, in the county of Cook and State of Illinois, have invented certain new and useful Improvements in Dog-Racing Amusements, of which the following is a specification.

My invention relates to amusements in which dogs are induced to race about a track by means of a lure or object conveyed mechanically in advance of them.

The object of my present invention is to provide a suitable track, an electric conveyer operated thereon, and a lure or bait to attract the dogs to race thereafter.

Other objects reside in the mechanical construction of the housing for the track and conveyor, the braking mechanism for stopping the said conveyer, the means for mounting and carrying the lure, and the means for concealing the lure within its den at the end of the race.

With the foregoing, and other objects in view, the invention consists of the arrangement and combination of parts as hereinafter described and claimed, and while the invention is not restricted to the exact details of the construction disclosed herein, yet, for the purpose of illustrating a particular embodiment thereof, reference is had to the accompanying drawings, in which like reference characters designate the same parts in the several views, and in which:

Figure 1 is a plan view of a track for dog racing, with my conveyer installed thereabout.

Fig. 2 is a section view of the housing for the track conveyer, etc., showing forward end view of conveyer, brakes removed.

Fig. 3 is a top plan view of the conveyer.

Fig. 4 is a section view of the conveyer taken along the line 1—1 of Fig. 3, showing the brake equipment.

Fig. 5 is a detail of the brake releasing mechanism.

Fig. 6 is a detail of the door to the den.

Fig. 7 is a detail of the door to the conveyer housing.

In the construction of my dog racing amusement, I provide a race track for the dogs, as 30, which may be circular, oval, kite-shaped, or any similar shape, and may be of such size as shall be best suited to the space available, and the purpose in view. This race track is fenced on one side by the low fence 31, and on the other side is inclosed by the housing 31ª of the conveyor track, which surrounds said dog race track on the outer side. At some suitable location adjacent to the said track I have installed a raised platform or tower, as 32 within which are installed suitable electric switches, speed controllers, and such other electric mechanism as shall be best suited to control the operation of the conveyer as hereinafter described.

The housing for my conveyer track is constructed with the frame work of posts 1 and 2 arranged around the distance of the track in pairs, and at suitable distances apart. These posts are set in the ground as shown, and the posts 2 extend but a short distance above the surface of the ground, while the posts 1 extend above the top of the housing. The pairs of posts 1 and 2 are suitably connected together by the cross pieces 3, forming ties for supporting the rails for the conveyer track 4—4, and also for the third rail 5 which carries the electric current for operating the conveyer car hereinafter described. For the purpose of supporting the roof 1ª of the housing, and the overhanging side toward the track, I have provided the brackets 6 mounted upon the inner sides of the posts 1 as shown, and I have also provided a truss rod 8 which is attached to the roof 1ª, passes over the top of the post 1, and is suitably anchored in the ground outside of the housing as at 9.

I have provided boards running lengthwise of the said course for lining said housing, as 12 fastened to the posts 1, 11 attached to the roof 1ª, 10 suspended from the ends of the roof 1ª, and 13 secured to the posts 2, these forming a complete inclosure of the said conveyer track and conveyer, with the exception of the space between the boards 10 and 13, where is provided an opening extending the en-

tire circumference of the course for the purpose hereinafter explained.

Mounted to run upon the rails 4, 4 within the housing, I have provided an electric conveyer car, consisting of a frame of side bars 14, connected together by means of the cross bars 15 at their ends, and the additional cross bars 16 near the middle. Upon the cross bars 16 I have mounted a suitable electric motor 17 for propelling said conveyer car. Secured at suitable locations upon the side bars 14 I have provided the bearings 18 within which are journaled the axles 19, carrying at the outer ends thereof, the car wheels 21 rigidly attached thereon, and designed to run upon the rails of the track 4, 4. Mounted rigidly upon the axle at the front I have also provided a gear wheel as 22 in mesh with a corresponding gear wheel 23 mounted upon the shaft 24 of the motor 17, and designed to impart motion from the motor to the car wheels. At 25 on the side of said car toward the dog race course, I have hinge-mounted the arm 26 extending through the opening between the side boards 10 and 13 of the housing, and out toward the middle of the dog race course. Near the outer end of said arm I have mounted a wheel 28, preferably with rubber tire to rotate on the ground, and support the end of said arm 26. Above said wheel I have provided a platform 27 for mounting upon it the lure 29 in shape of a stuffed rabbit or other suitable object to entice the dogs to chase it. At the point 40 I have connected to said arm 26 a spring, extending to and attached to the frame as shown, designed to hold the said arm, and the wheel at the end of said arm down with the wheel in contact with the ground. At 41 on the frame of said car I have provided a bracket extending downward, and carrying at its lower end the contact shoe 42 in contact with the third rail 5, said shoe being connected by suitable wiring with the electric motor 17 for conveying the current received from the third rail to said motor.

At 43 I have provided a bracket extending upward from the frame of said conveyer car, and carrying at its upper extremity one or more shoes 44 for contact with the roof boards 11 of the housing, in case the car conveyer should jump off the rails, or for any reason should raise above said rails. Normally said shoes are out of engagement with the roof boards 11.

At 45 on the side bars of said conveyer car I have provided bearings for the brake rod shafts 46. Said brake rod shafts carry the brake shoes 47 positioned in proximity to the car wheels 21 and designed to engage said car wheels when required to brake the speed of said car, and to stop the same at the end of the run. Extending upwardly from said brake rod shaft I have provided the arms 48 having holes 49 bored near their extremity, through which passes the rod 50, threaded at its outer ends, and with nuts thereon, and a compression spring 51 for operating said brakes. The tension of said spring 51 may be increased or diminished by adjusting the nuts as desired.

Midway the length of said brake rod shafts I have provided another arm 52, extending both above and below said brake rod shaft. At the lower end of the arm 52 attached to the forward brake rod shaft, I have provided a rectangular opening, and a hole suitable for receiving a pin as 53 to hold the brake operating and releasing bar 54. At the rear the arm 52 is also provided with a rectangular opening at its lower end for receiving said brake releasing bar 54. Said brake releasing bar is constructed with several holes at its forward end for suitable adjustment by the pin 53, and at its rear end it is provided with a notch 55 for engaging the arm 52 at the rear, and when so engaged, holding the brake shoes 47 out of engagement with the car wheels. At a suitable point 60 in the course of the track, a trip is provided for engaging the rear curved end of the brake releasing bar 54, and disengaging it from the arm 52 at the rear of said car, permitting the springs 51 to press the shoes 47 into engagement with the car wheels, and by the friction reduce the speed of said car, and bring it to a stop after the electric power is shut off. The curved terminal portion of the bar 54 extends below the rest of the bracket mechanism and into the path of the projecting trip 60 so as to be engaged and lifted by the same. The curved terminal portion of the bar 54 presents a lower convex face to the trip and is lifted by the same sufficiently to cause the bar 54 to release the member 52 and permit the brake mechanism to operate. I have also provided rings as 55' on the lower side of the frame of said car, designed to engage hooks mounted in the track at 56 for stopping said car at said point and holding it against forward movement

in case the brakes shall for any reason be insufficient to bring the car to a stand still.

At 33 in the course of my track, I have provided a switch, with a track extending to the den or inclosure where the lure is to be concealed after the race. On the side of the housing toward the track at the point 33 I have provided a side door, mounted upon hinges as shown at 34. During the race said door 34 is held open by means of the catch 35, but as the race is completed, and the car conveyer passes over the switch in entering the den, it trips the said catch, and closes said door against the admission of the dogs. I have also provided a second door, as 36 at the entrance to the den, which is likewise held open during the race by the catch 37. As the car and lure pass through said door into the den, the catch is released by the trip 38 as shown.

At a suitable point, as 57, a cage is provided for retaining the dogs until the race is ready to be run. At 58 a judge's stand is provided, and in front of said judge's stand is provided a wire as usually employed on race courses for determining the winner. A grand stand may be provided as at 59 for accommodation of the audience.

In the operation of my said device, the conveyer car with the lure is backed out upon the track across the switch 33 and the car is started slowly around the course in the direction indicated by the arrow. The dogs are retained within the cage until the lure passes opposite said cage, and at a pre-determined time the barrier retaining said dogs is raised, and the dogs are simultaneously released, to pursue said lure. The lure is then carried around the track by the electric conveyer car, (or may be carried twice or more around in smaller tracks) and usually as the lure comes down the home stretch, the power is cut off, and the car permitted to run by its own momentum, with the dogs chasing. As the dogs pass under the wire, the judges decide which are the winners. When the race is finished by passing once or more around the course, the switch 33 is thrown to sidetrack the conveyer car onto the track leading to the den, and the lure is carried through the trap doors 34 and 36, which are closed behind the conveyer car and the lure, and thus conceal the lure from the dogs and prevent their further pursuit thereof. As the car passes the trip 60, the brake mechanism is released, and the brakes

are applied to the car wheels, to bring said car to a stop within the den. In case the car does not stop before reaching the hooks 56, the rings depending from the lower side of the frame engage with said hooks and thus bring the car to a full stop.

Having thus described my invention, what I claim and desire to secure by Letters Patent, is the following:

1. In a dog racing amusement, a race course suited for dogs, a casing extending around the outer side of the race course and provided with a longitudinal opening, a mechanical conveyer including a track extending around the race course and located within the casing, and a conveyer car mechanically operated upon said track and provided with an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure, and a wheel rotatably mounted on and supporting the arm at the projecting end thereof.

2. In an amusement, the combination of a race course suited for dogs, a covered railtrack adjacent said course on one side, a conveyer car mechanically operated upon said track, a horizontally extending arm hinged to said car extending midway of said course, a wheel rotatably mounted near the end of said arm, and resting upon the ground, a platform supported by said arm and a lure or quarry mounted upon said platform for attracting the dogs.

3. In a dog racing amusement, the combination of a race course suited for dogs, a housing adjacent said course on one side having an opening in the side toward the course, a rail track within said housing, an electrically operated car within said housing for operation upon said rail track, an electric conductor within said housing, a shoe carried by the car for contact with said conductor, friction brakes adjacent the wheels of said car, means for holding said brakes out of contact with said wheels, means on the track for releasing said brakes, a hinged arm extending horizontally from said car through the opening in the side of the housing, a wheel mounted upon said arm for rotation upon the ground, a platform also mounted upon said wheel and a lure mounted upon said platform.

4. In a dog racing amusement, a race course suitable for dogs to race upon, a covered two rail track along one side

of said course having a lateral opening on the side toward said course, a mechanically operated car for operation upon said track, an arm carried by said car extending through said opening, a wheel support for said arm resting upon said course, a decoy or lure mounted upon said arm, a spring for holding said wheel in contact with the ground, brake mechanism adjacent the wheels of the car, a trip along said track for releasing said brakes, springs for applying said brakes to said car wheels, when so released, a shoe carried by the car in proximity to the roof of said covering, for engagement with said roof whenever the car rises off the track rails, rings depending from the car and hooks at the end of the spur track for engaging the rings and stopping the car.

In testimony whereof, I have hereunto set my name in the presence — a witness.

Owen P. Smith.

Witness: M. J. Paddon.

Defendant's Exhibit H

2—421

1919

CONTENTS:

1. Application papers.
2. Rej. Oct. 3, 1919.
3. Assoc. P. of A. Sep. 24, 1920.
4. Amendment A Sep. 24, 1920.
5. Letter to Office Sept. 29, 1920.
6. Rej. Oct. 21, 1920.
7. Amendment B Nov. 10, 1920.
8. Rej. Feby. 28, 1921.
9. Amendment C Mar. 14, 1921.
10. Amendment D May 14, 1921.
11. Notice of Suit Aug. 7, 1926.
12. Notice of Suit Oct. 5, 1926.
13. Notice of Suit Dec. 4, 1926.
14. Notice of Suit Jan. 15, 1927.
15. Notice of Suit July 14, 1927.
16. Notice of Suit July 14, 1927.
17. Notice of Suit July 28, 1927.
18. Notice of Suit Aug. 20, 1927.

DEFENDANT'S EXHIBIT I—Filed Sept. 8, 1921.

390

DEPARTMENT OF COMMERCE.

United States Patent Office.

To all persons to whom these presents shall come, Greeting:

This is to Certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the

Letters Patent of

Owen P. Smith,

Number 1,507,439, Granted September 2, 1924,

for

Improvement in Starting Cages for Racing Dogs.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at

Defendant's Exhibit I

the City of Washington, this second day of September in the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States of America the one hundred and fifty-second.

Thomas E. Robertson,
Commissioner of Patents.

(Seal)
Attest:
D. E. Wilson,
Chief of Division.

Number (Series of 1915) 1911 — Div. 38 G
4700801/2 — (Ex'r's Book) 57 9

Div. 38 — Patent No. 1507439
Name Owen P. Smith — Sep 2 1924
of Chicago
County of
State of Illinois
Invention Starting Cages for Racing Dogs

FILED, 19

Parts of Application Filed	Original	Renewed
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DIVISION OF APP., No.

Attorney Chester W. Brown, 514 West Van Buren St. Chicago, Ill.

Associate Attorney

3 (No. of Claims Allowed 1) Print Claims 1 in O. G. (Cl. 119—15.5)

Title as Allowed Starting Cages for Racing Dogs

Defendant's Exhibit I

Telephone Harrison 7441

Patents Experiment Work Models

CHESTER W. BROWN & CO.
Patent Attorneys
514 W. Van Buren St.
Chicago

$15.00 Rec'd
May 14, 1921

May 11th, 1921.

C. C. U. S. Pat. Office
Commissioner of Patents,
Washington, D. C.

Sir:

Enclosed I hand you application papers for Mr. O. P. Smith, for patent on Starting Cage for Racing Dogs together with Fifteen Dollars for first government fees.

The drawings accompany under separate cover.

Resp'y,

Chester W. Brown.

Serial No. 470.080½ Paper No.174
~~472312~~
Application.

Mail Room
May 14 1921
U. S. Patent Office

(Stamped on margin): This power of attorney will not be recognized until after the stamps of the value of 25 cents have been paid and canceled.
(Canceled 25 cent Documentary Stamp.

PETITION WITH POWER OF ATTORNEY.

To the Commissioner of Patents:—

Your petitioner, Owen P. Smith, a citizen of the United States and a resident of the City of Chicago, in the County of Cook and State of Illinois, and whose Post Office Address is at No. 514 West Van Buren Street in said City, prays that Letters Patent may be granted to him for the improvements in Starting Cages

Defendant's Exhibit I

for Racing Dogs set forth in the annexed specification;

And he hereby appoints Mr. Chester W. Brown of No. 514 West Van Buren Street in said City of Chicago, State of Illinois, his attorney, with full power of substitution and revocation, to prosecute this application, to make alternations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at the City of Chicago, County of Cook and State of Illinois, this 3rd day of May, 1921.

Owen P. Smith.

FBC

SPECIFICATION.

To All Whom it May Concern:

Be it known that I, Owen P. Smith, a citizen of the United States, residing at the city of Chicago, in the Per B county of Cook and State of Illinois, ~~Michigan,~~ have invented ~~certain~~ new and useful improvements in starting cages for racing dogs, of which the following is a specification,

This invention relates to starting cages for dogs in dog racing courses, and the object is to provide such a cage, in which the dogs will be held in separate stalls until the time to release them, and then they are all to be released simultaneously as the barrier is raised.

A special object of this present invention is to provide means of protecting the dogs against injury in the cage,

And another object is to provide efficient means for quickly removing the barrier out of the way of all of the dogs at the same time, giving all an equal opportunity to join in the chase.

With the above and other objects in view, my invention consists of the arrangement and combination of parts as hereinafter described and claimed, and while the invention is not restricted to the exact details of construction disclosed herein, yet, for the purpose of illustrating a particular embodyment thereof, reference is had to the accompanying drawings, in which like reference characters designate the same parts in the several views, and in which;

Figure 1 is a top plan view of one of my cages.

Figure 2 is an end elevation thereof.

In the construction of my said starting cage, I have preferably formed a frame work of timbers as 1, 1, and upon this frame work have attached wire screen 2, of

a mesh suitable for the purpose. By means of the partitions 3, 3, also covered with screen, I have divided said cage into the required number of individual stalls, as one for each dog entered in the race. At the rear of each stall I have provided a separate door, as 4 for each stall, suitably hinged and latched, for use in admitting the dogs to the respective stalls. To protect the dogs from injury against the wire screen, I have covered the lower part, up to about the height of the shoulder of the dogs, with suitable cloth or canvas 5, as shown.

At the front of the cage I have provided the door 6, opening outwardly and upwardly, being mounted by hinges as 7, 7 at the top of the cage, and having the latch 8 near the bottom of the cage to hold it in position when closed. For the purpose of opening said door 6 quickly, when the latch 8 is released, I have provided the timbers 9, 9, extending above, and out in front of the cage, as shown, and attached to the end thereof are the coiled tension springs 11, 11. The lower ends of the springs 11, 11, are attached in suitable eyes, as 10, 10 near the lower edge of the door 6.

By this construction, when it is desired to use the starting cage, the door 6 is closed, and fastened by the latch 8. The dogs are placed in their respective stalls through the doors 4, 4 at the rear. When it is desired to release the dogs for the race, the latch 8 is released, and the tension springs 11 raise the door 6 quickly above and out of the path of the dogs as they pass out of said cage through the front.

It will be apparent that other means may be employed to raise the door 6, and other means may be employed to protect the dogs against injury in the stalls, without departing from the spirit of my said invention.

Having thus described my said invention, what I claim and desire to secure by Letters Patent, is the following:—

1st. In a starting cage for racing dogs or the like, the combination of a frame, wire mesh upon said frame, fabric covering a portion of said wire mesh, inlet doors and a common exit door with special means for opening said exit door.

2nd. In a starting cage for racing dogs and the like, the combination of a frame, a net work upon said frame, petitions within said frame to form stalls, a rear inlet door for each stall, a common front exit

Sub A B

Defendant's Exhibit I

door for all of said stalls and means for opening said exit door when released.

3rd. In a starting cage for racing dogs and the like, the combination of a frame, a transparent covering upon a portion of said frame, partitions within said frame forming individual stalls, an entrance door for each stall, a front door common for all of said stalls, a latch for said front door, and springs opening said front door quickly when released.

In Testimony Whereof, I have hereunto set my hand in the presence of two subscribing witnesses.

In Presence of
Chester W. Brown,
Richard Green.

Owen P. Smith.

OATH.

State of Illinois, }
County of Cook. } ss.

Owen P. Smith, the above named petitioner, being sworn, deposes and says; that he is a citizen of the United States, and resident at 514 W. Van Buren Street in the City of Chicago, County of Cook and State of Illinois; that he verily believes himself to be the original, first and sole inventor of the improvement in

Starting Cages for Dogs,

described and claimed in the annexed specification, that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application; or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application; and that no application for patent of said improvement has been filed by him or his representatives or assigns in any country foreign to the United States.

Owen P. Smith.

Defendant's Exhibit I

Sworn to and subscribed before me this 9th day of May, 1921.

Charles H. Knight,
Notary Public.

(Seal)
My Commission Expires July 2nd, 1924.

WMN

Address only
The Commissioner of Patents
Washington, D. C.

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

May 23rd, 1921.

Sir:

I have to acknowledge the receipt of your incomplete application for patent, the title of which is improvement in

Starting Cages for Racing Dogs

filed* May 14, 1921, accompanied by
Petition,
Affidavit,
Specification,
Drawing,
First fee of $15,

This application is informal for the reason that a drawing is required.

A twenty-five cents revenue stamp is required for the power of attorney.

Very respectfully,
T. E. Robertson,
~~R. F. Whitehead.~~
Commissioner of Patents.

Owen P. Smith
Chester W. Brown,
514 West Van Buren Street,
Chicago, Ill.

*This informal application must be completed within one year from the filing date above mentioned.

Defendant's Exhibit I

Serial No. 470,080½
Paper No. 2
Letter filing stamp

Telephone Harrison 7441

Patents Experiment Work Models

CHESTER W. BROWN & CO.
Patent Attorneys
514 W. Van Buren St.
Chicago

38

Mail Room
Jun. 14, 1921
U. S. Pat. Office
U. S. Pat. Office
Jun. 16, 1921
Division 38.
June 15, 1921
U. S. Patent Office,

June 11th, 1921.

Commissioner of Patents,
Washington, D. C.

Dear Sir:

Herewith we hand you uncancelled revenue stamp to be attached to the Power of Attorney in the application of **Owen P. Smith**, for **Starting Cages for Racing Dogs**, filed under date of May 16th, 1921, and bearing Serial No. 470,080½, which stamp was omitted by oversight.
25c Revenue Stamp herewith

Resp'y
Chester W. Brown,
Atty. for Applt.

Defendant's Exhibit I

Div. 38 Room 378 2—260 Paper No. 3

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of invention, and name of the applicant.

CDH/AI

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

August 18, 1921.
U. S. Patent Office
Aug. 18, 1921.
Mailed

C. W. Brown,
514 West Van Buren St.,
Chicago, Ill.

Please find below a communication from the Examiner in charge of the application of O. P. Smith, Ser. No. 470,080½, filed May 16, 1921.

Starting Cages for Racing Dogs.

Thomas E. Robertson,
Commisioner of Patents.

The preamble of the specificatien states that applicant resides in the State of Michigan. This is inconsistent with the statement of residence elsewhere in the papers.

The claims are rejected on
Whitehead, 529,987. Nov. 27, 1894; 119-15.5 which anticipates the structure claimed.

The claims are also rejected on each of
Andrew, 543,762, July 30, 1895 119-15.5
and
Stitzer 868,029, Oct. 15, 1907; " " "
in view of each of
Stedeker, 647,166, Apr. 10, 1900; " " "
and
Escude, 731,347. June 16, 1903; " " "
which suggest the "common exit door".

CDH

G. R. Ide,
Exr.

Defendant's Exhibit I

Serial No. 470.080½ Paper No. 4
Amendment A
Application Div.
Feb 9 1922
U. S. Patent Office

U. S. Patent Office
Feb 10 1922
Division 38
Div. 38, Room 378,
O. P. Smith,
Ser. No. 470,080½,
Starting Cages for Racing Dogs,
Filed May 16, 1921.

February 8, 1922.

Honorable Commissioner of Patents,

Sir:

Responsive to the Official Letter of August 18, 1921, the above application is hereby amended as follows:

Cancel the claims and insert:

A¹ In a starting cage for racing dogs a frame comprising a box-like structure divided into a plurality of compartments, individual rear doors for each of the compartments and a single front door pivoted at its Sub. B¹ upper end to the side walls of the frame, divergent inclined members carried by the said frame and extending beyond the face thereof and having its outer ends in vertical alignment with the side walls of the box-like structure, springs secured to the said outer ends and to the door and a latch for securing the door in its closed position.

REMARKS.

Applicant has reduced the number of claims in this case and it is believed that the new claim clearly defines over the art of record. None of the references show the divergent inclined members having their outer edges in vertical allignment with the side walls of the box-like structure. A material advantage is gained by this structure in view of the fact that the springs being connected to these outer ends lie in the same plane as the hinge members by means of which the door is secured to the frame. This provides for a direct action of the springs the moment the latch is released.

It will also be noted that applicant provides a compact and simple device freed of the multiplicity of

Defendant's Exhibit I

unnecessary parts employed in all of the references of record, and it is believed that applicant is entitled to protection of the specific form of this invention.

Respectfully submitted,
Geo. C. Shoemaker,
Chester W. Brown.

Div. 38 Room 378 2—260 Paper No. 5

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of invention, and name of the applicant.

CDH/AI

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

April 29, 1922.
U. S. Patent Office
Apr. 2, 1922
Mailed

C. W. Brown,
514 West Van Buren St.,
Chicago, Ill.

Please find below a communication from the Examiner in charge of the application of O. P. Smith, Ser. No. 470,080½, filed May 16, 1921.

Starting Cages for Racing Dogs.

Thomas E. Robertson,
Commissioner of Patents.

Responsive to the amendment of Feb. 9, 1922.

In the preamble of the specification "Michigan" seems to be incorrect. In line 7 of the claim "its" should be **their**, and "vertical alinement with" implies incorrectly that the ends are directly above the walls. What applicant means is that the ends are in the same planes as the walls.

The claim is rejected on each of Andrew and Stitzer in view of Escude which suggests the "single front door" springs and latch. This produces structure fully equivalent to that claimed.

CDH

G. R. Ide,
Examiner, Div. 38.

Defendant's Exhibit I

Serial No. 470.080 Paper No. 6
Amendment B

U. S. Patent Office
Oct 31 1922
Division 38
Div. 38, Room 378,
O. P. Smith,
Starting Cages for Racing Dogs,
Filed May 16, 1921,
Serial No. 470,080½

Application Room
Oct 30 1922

Washington, D. C., October 28, 1922.

Honorable Commissioner of Patents,

Sir:—

In response to the official action of April 29, 1922, the above entitled application is hereby amended as follows:—

In the preamble change "Michigan" to —Illinois—

Cancel the claim and insert:—

B¹ In a starting cage for racing dogs, a frame comprising a box-like structure divided into a plurality of compartments and comprising walls formed of wire mesh partially covered with fabric, individual rear doors for each of the compartments and a single front door hinged at its upper end to the top walls of the frame, divergent inclined members secured to the top of the said frame and extending upwardly and outwardly beyond the face of the front door and having their outer ends in the plane of the side walls of the box-like structure, springs secured to the ~~said~~ outer ends of said inclined members and to the door and lying in the plane of the hinges, a keeper secured to the sides of the frame and extending beyond the face of the door when in closed position, and a latch carried by the door and engaging the keeper to hold the door in closed position.

per C

Sub C¹

REMARKS.

Applicant submits herewith one new claim, which is believed to avoid the art of record. As stated in the last amendment the references failed to show these divergent upwardly inclined members extending beyond the front face of the box-like structure and applicant has embodied further structure in the present claim, not disclosed by the art. The securing of the springs to the outer ends of the divergent members and

to the door in the plane of the hinges provides a direct action for the springs when the latch is released, and it is submitted that the combination of elements called for in this claim cannot be anticipated by any or all of the references, taken singly or collectively. In this connection it might be well to note the language used in the decision of ex parte Geé, 1919 C. D., page 49. In this case it was held "that in order to negative invention in a novel combination, it is necessary to find in the prior art a device which not only shows that the modification **ought to be made but how to make it.**" This decision calls for two distinct elements which must be present in the prior art before a claim can be properly rejected. The first element is that the prior art must show that a modification is needed, and secondly the prior art must teach how to make this change. Certainly none of the references cited by the Examiner contain both elements and the rejection cannot be properly made in the absence of either one of the same.

An allowance is asked.

Respectfully submitted,

Geo. C. Shoemaker,

Attorney for Applicant.

Serial No. 470.080½ Paper No. 8
Amendment C
Application Div.
Jan 17 1924
U. S. Patent Office

U. S. Patent Office
Jan 18, 1924
Division 38
Div. 38, Room 378,
Owen P. Smith,
Starting Cages for Racing Dogs,
Filed May 16, 1921,
Serial No. 470,080½

Washington, D. C., January 16, 1924.

Honorable Commissioner of Patents,

Sir:

In response to the Official action of March 23, 1923, amendment is hereby made as follows:

In the claim line 9 erase "said" and insert the; line 10 after "ends" insert of said inclined members; line 10 beginning with "a keeper" erase to the end of

Defendant's Exhibit I

the claim and insert/and a latch at the bottom of the cage for coaction with the lower edge of the front rom door to hold the front door normally closed against the tension of said springs, said springs adapted to raise the front door upon release of the latch.

sig.

REMARKS.

The claim now correctly defines the insertion and for the reasons set up in the last amendment the claim should be allowed.

Respectfully submitted,
Chester W. Brown.
~~Geo. C. Shoemaker.~~

Div. 38 Room 378 2—260 Paper 7-Rej.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of invention, and name of the applicant.

CDH.Mc.

DEPARTMENT OF THE INTERIOR.
United States Patent Office
Washington

Mar. 23, 1923.
U. S. Patent Office
Mar. 23, 1923
Mailed

Chester W. Brown,
514 West Van Buren St.,
Chicago, Ill.

Please find below a communication from the Examiner in charge of the application of Owen P. Smith, 1470,080½, Starting Cages for Racing Dogs, May 16, 1921.

Thomas E. Robertson,
Commisioner of Patents.

Amended Oct. 30, 1922.

The claim is rejected as not supported by the original disclosure, which does not mention the "keeper" and

Defendant's Exhibit 1

does not state or imply that the latch is carried by the door.

CDH

G. R. Ide,
Examiner, Div. 38.

Div. 38 Room 378 260 Paper No. 9

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of invention, and name of the applicant.

CHD.Mc.

DEPARTMENT OF THE INTERIOR.
United States Patent Office
Washington

May 15, 1924.

U. S. Patent Office
May 15, 1924
Mailed

Chester W. Brown,
514 West Van Buren St.,
Chicago, Ill.

Please find below a communication from the Examiner in charge of the application of Owen P. Smith, #470,080½, Starting Cages for Racing Dogs, May 16, 1921.

Thomas E. Robertson,
Commisioner of Patents.

Amended Jan. 17, 1924.

The drawing is objected to by the Office draftsman, as the lines are rough in parts and the lettering is poor. It can be corrected at a cost of $1.50.

The claim is allowed.

M. K. Peck,

CDH

Ass't'g. Examiner, Div. 38.

Defendant's Exhibit I

Serial No. 470,080½ - Paper No. 10
Amendment to Dog
C

$1.50 Rec'd.
May 24, 1924
C. C. U. S. Patent Office
Div. 38 Room 378,
Owen P. Smith
Starting Cages for Racing Dogs,
Filed May 16, 1921.
Ser. No. 470,080½

U. S. Patent Office
June 25, 1924
Division 38

Washington, D. C.
May 23, 1924.

Honorable Commissioner of Patents,

Sir:

Responsive to Examiner's letter of May 15, 1924, I enclose $1.50 to cover the cost of correcting the drawing in this case.

Respectively,
Chester W. Brown,
Attorney.

Defendant's Exhibit I

Serial No. 470,080½

Address only
The Commissioner of Patents
Washington, D. C.

2—181

HEMc-38 CDH

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

June twenty-five, 1924.

Owen P. Smith

Sir: Your Application for a patent for an Improvement in Starting Cages for Racing Dogs, filed May 14, 1921, has been examined and Allowed. (1 claim)

Tht final fee, Twenty Dollars, must be paid not later than Six Months from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed with an additional fee of $20, under the provisions of Section 4897 Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you will also send, Distinctly and Plainly Written the name of the Inventor, Title of Invention, and Serial Number as Above Given, Date of Allowance (which is the date of this circular), Date of Filing, and if assigned, the Names of The Assignees.

If you desire to have the patent issue to Assigness, an assignment containing a Request to that effect, together with the Fee for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the patent uncertified copies of the drawings and specifications may be purchased at the price of Ten Cents Each. The money should accompany the order. Postage stamps will not be received.

☞ IN REMITTING THE FINAL FEE GIVE THE SERIAL NUMBER AT THE HEAD OF THIS NOTICE.

☞ UNCERTIFIED CHECKS WILL NOT BE ACCEPTED.

Defendant's Exhibit I

Final fees will Not be received from other than the applicant, his assignee or attorney, nor a party in interest as shown by the records of the Patent Office.

Respectfully.

Thomas E. Robertson,
Commissioner of Patents.

Chester W. Brown,
514 West Van Buren St.,
Chicago, Ill.

2—327.

Final Fee Paid to United States Patent Office.

(Be careful to give correct Serial No.)

$20.00 Rec'd.
Aug. 7, 1924
C. C. U. S. Patent Office
Serial No. 470080½
Inventor: Owen P. Smith
Patent to be Issued to As per record
Name of Invention, as Allowed: Starting Cages for Racing Dogs
Date of Payment: August 7, 1924
Fee: Twenty Dollars
Date of Filing: May 14—1921
Date of Circular of Allowance: June 25—1924

The Commissioner of Patents will please apply the accompanying fee as indicated above.

Chester W. Brown,
Attorney.

Send Patent To
Mr. Chester W. Brown
318 W. Wesley St.
Jackson, Mich.

Defendant's Exhibit I

UNITED STATES DISTRICT COURT.
Northern District of Ohio (Eastern Division)

Mail Room
Aug. 7, 1926
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (~~41~~ 42 Stat. L.....), you are advised that there was filed on the 5th day of August, 1926, in this court an action, suit, or proceeding No. 1982, entitled:

Name Owen P. Smith, Plaintiff,
Address Miami, Florida,

versus

Name W. N. Steinman, et al. Partners, etc., Defendant,
Address 204 Medford Bldg. 21 Main St.,
Ds brought upon the following potents:

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sep. 10, 1912,	Owen P. Smith
2	1,379,224	May 24, 1921.	do
3	1,410,842	May 24, 1921.	do
4	1,507,439	Sep. 2, 1924.	do
5	1,507,440	Sep. 2, 1924.	do
6	1,591,569	July 6, 1926.	do

In the above-entitled case, on the.....day of....., 192 , the following patents have been included by..... .....(insert amendment, answer, cross bill, or other pleading):

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

Defendant's Exhibit I

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In witness whereof I have affixed my hand this 5th day of August, 1926, at Cleveland, Ohio.

B. C. Miller,
Clerk of said Court.
By C. A. Wilder Deputy Clerk.

UNITED STATES DISTRICT COURT
Southern District of Ohio

Mail Room
Oct 1926
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (41 42 Stat. L.....), you are advised that there was filed on the 30th day of September, 1926, in this court an action, suit, or proceeding No. 464, entitled:
Name Owen P. Smith, Plaintiff,
Address Miami, Dade County, Florida

versus

Name Franklin Kennel Club, Limited, Edward H. McGrath, Thomas H. Buxton, Edward Siefert, William B. Wheeland, Reinhart Wilke, and Robert Diehst, Defendants
A[s] brought upon the following patents:
Address Grove City, Franklin County, Ohio.

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	Owen P. Smith
3	1,410,842	March 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith
5	1,507,440	Sept. 2, 1924	Owen P. Smith
6	1,591,569	July 6, 1926	Owen P. Smith

In the above-entitled case, on the.....day of....., 192 , the following patents have been included by....

Defendant's Exhibit I

.....(insert amendment, answer, cross bill, or other pleading):

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness whereof I have affixed my hand this 4th day of October, 1926, at Columbus, Ohio.

Harry F. Rabe,
Clerk of said Court.

UNITED STATES DISTRICT COURT.
Eastern District of Louisiana

Mail Room
Dec. 4, 1926
Honorable Commissioner of Patents,

Washington, D. C.
U. S. Patent Office

Sir:

In compliance with the Act of February 18, 1922 (~~41~~ 42 Stat. L.....), you are advised that there was filed on the 1st day of December, 1926, in this court an action, suit, or proceeding No. 18,596, entitled:
Name Owen P. Smith, Plaintiff,
Address Miami, Florida

versus

Name American Electric Rabbit Racing Assn. Inc, et als., Defendants,
Address New Orleans, La.
E[s] brought upon the following patents:

Defendant's Exhibit 1

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sep. 10, 1921,	Owen P. Smith,
2	1,379,224	May 24, 1921.	do
3	1,410,842	May 28, 1921	do
4	1,507,439	Sep. 2, 1924.	do
5	1,507,440	Sep. 2, 1924.	do
6	1,591,569	July 6, 1926.	do

In the above-entitled case, on the.....day of....., 192 , the following patents have been included by..... .....(insert amendment, answer, cross bill, or other pleading):

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness whereof I have affixed my hand this 2nd day of December, 1926, at New Orleans, La.

H. J. Carter,
Clerk of said Court.

UNITED STATES DISTRICT COURT.
Eastern District of Louisiana

Mail Room
Jan. 15, 1927
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (41 42 Stat. L. .....), you are advised that there was filed on the

Defendant's Exhibit I

12th day of January, 1927, in this court an action, suit or proceeding No. 18,651, entitled:
Name Owen P. Smith, Plaintiff,
Address Miami, Dade County, Florida.

versus

Name Louisiana Greyhound Club, Incorporated, et als, Defendants,
Address Jefferson Parish, Louisiana.
B^s brought upon the following patents:

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sep. 10, 1912,	Owen P. Smith,
2	1,379,224	May 24, 1921.	do
3	1,410,842	Mch. 28, 1922.	do
4	1,507,439	Sep. 2, 1924.	do
5	1,507,440	Sep. 2, 1924.	do
6	1,591,569	July 6, 1926.	do

In the above-entitled case, on the.....day of....., 192 , the following patents have been included by..... .....(insert amendment, answer, cross bill, or other pleading):

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

....
....

In witness whereof I have affixed my hand this 13th day of January, 1927, at New Orleans, Louisiana.

H. J. Carter,
Clerk of said Court.

Defendant's Exhibit I

UNITED STATES DISTRICT COURT.
Northern District of Illinois

Mail Room
Jul. 14, 1927
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L. ...), you are advised that there was filed on the 8th day of June, 1927, in this court an action, suit, or proceeding No. 7164, entitled:
Name Hannah M. Smith, etc., Plaintiff,
Address Dade County, Florida.

versus

Name Ogden Kennel Club, et al, Defendant,
St Address Chicago, Illinois.
brought upon the following patents:

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,234	May 24, 1921	Owen P. Smith
3	1,410,842	March 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith
5	1,507,440	Sept. 2, 1924	Owen P. Smith
6	1,591,569	July 6, 1926	Owen P. Smith

In the above-entitled case, on the.....day of....., 192 , the following patents have been included by..... .....(insert amendment, answer, cross bill, or other pleading):

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

Defendant's Exhibit I

.....

.....

In Witness whereof I have affixed my hand this 12th day of July, A. D., 1927, at Chicago, Illinois.

Charles M. Bates,
Clerk of said Court.

UNITED STATES DISTRICT COURT.

Northern District of Illinois.

Mail Room
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (~~41~~ 42 Stat. L.....), you are advised that there was filed on the 8th day of June, 1927, in this court an action, suit, or proceeding No. 7165, entitled:
Name Hannah M. Smith, etc., Plaintiff,
Address Dade County, Florida.

versus

Name Edward H. Wait, et al., Defendant,
P[s] Address Chicago, Illinois.
brought upon the following patents:

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	Owen P. Smith
3	1,410,842	March 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith
5	1,507,440	Sept. 2, 1924	Owen P. Smith
6	1,591,569	July 6, 1926	Owen P. Smith

In the above-entitled case, on the.....day of....., 192 , the following patents have been included by..... .....(insert amendment, answer, cross bill, or other pleading):

Defendant's Exhibit I

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In witness whereof I have affixed my hand this 12th day of July, A. D, 1927, at Chicago, Illinois.

Charles M. Bates,
Clerk of said Court.

UNITED STATES DISTRICT COURT.
Southern District of Illinois.

Mail Room
Jul. 28, 1927
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L. 392), you are advised that there was filed on the 21st day of July, 1927, in this court an action, suit, or proceeding No. 616, entitled:
Name Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, Plaintiff,
Address Miami, Florida.

versus

Name Peoria Kennel Club, a Corporation of Illinois, et. al., Defendants,
Address Peoria, Illinois.
brought upon the following patents:

Defendant's Exhibit I

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	" " "
3	1,410,842	March 28, 1922	" " "
	1,507,439	Sept. 2, 1924	" " "
4	1,507,440	Sept. 2, 1924	" " "
	1,591,569	July 6, 1926	" " "
5	1,630,811	May 31, 1927	" " "
	1,630,812	May 31, 1927	" " "

In the above-entitled case, on the 21st day of July, 1927, the following patents have been included by.....(insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In witness whereof I have affixed my hand this 26th day of July, 1927, at Peoria, Illinois.

S. T. Burnett,
Clerk of said Court.

UNITED STATES DISTRICT COURT.
Southern District of Ohio

Mail Room
Aug. 20, 1927
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L....), you are advised that there was filed on the

Defendant's Exhibit I

19th day of August, 1927, in this court an action, suit, or proceeding No. 485 Eq., entitled:
Name Hannah M. Smith, Administratrix of the Eestate of Owen P. Smith, Plaintiff,
Address County of Dade, Florida

versus

Name Springdale Amusement Park, Limited et al, Defendant,
Address near the City of Hamilton, Ohio,
brought upon the following patents:

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	Owen P. Smith
3	1,410,842	March 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith
	1,507,440	Sept. 2, 1924	Owen P. Smith
5	1,591,569	July 6, 1926	Owen P. Smith
	1,630,811	May 31, 1927	Owen P. Smith
	1,630,812	May 31, 1927	Owen P. Smith

In the above-entitled case, on the.....day of....., 192 , the following patents have been included by..... .....(insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In witness whereof I have affixed my hand this 19th day of August, 1927, at Cincinnati, Ohio.

Harry F. Rabe,
Clerk of said Court.
By T. V. Lamb, Deputy.

DEFENDANTS' EXHIBIT "I"

SMITH PATENT NO. 1,507,439

SEPTEMBER 2, 1924.

Sept. 2, 1924. 1,507,439

O. P. SMITH.

STARTING CAGE FOR RACING DOGS

Filed May 16, 1921.

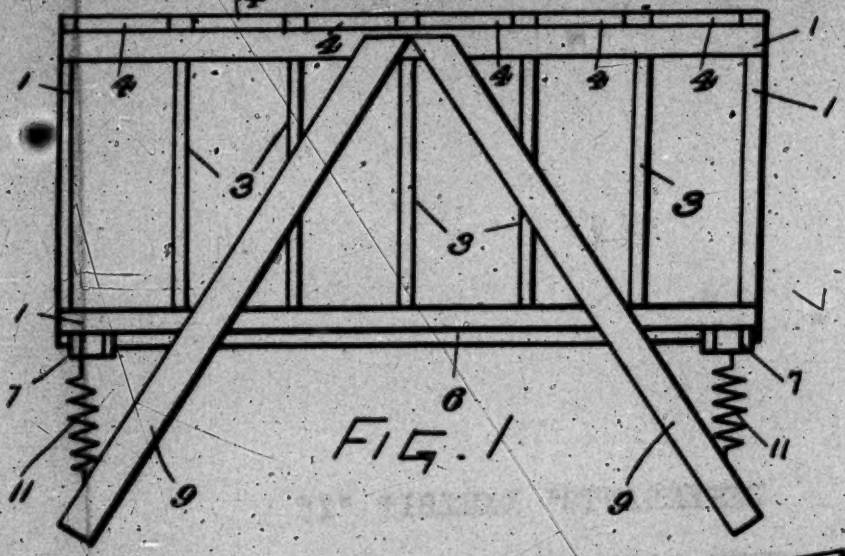


FIG. 1

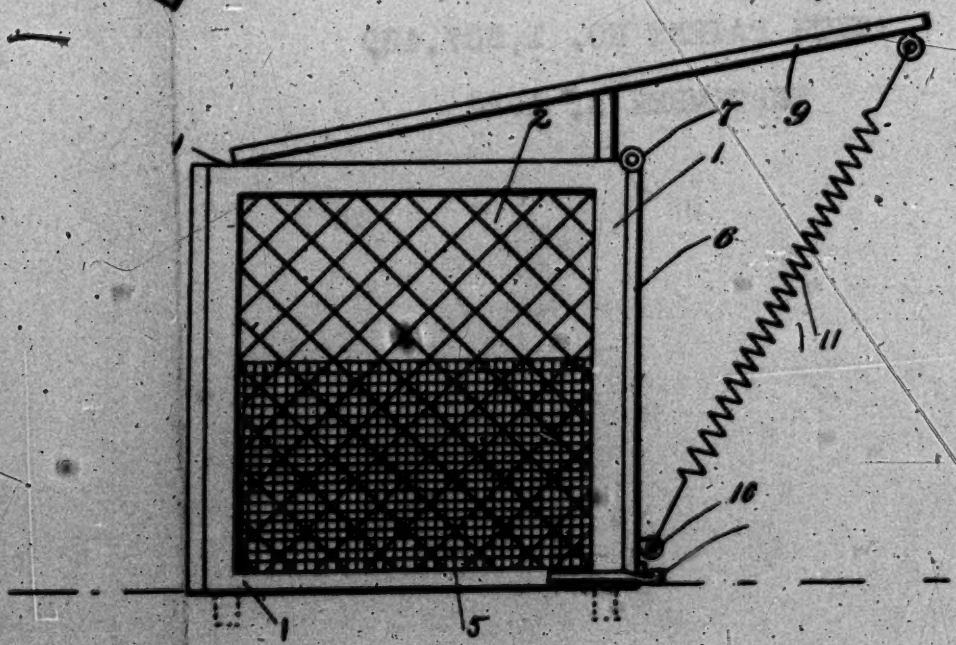


FIG. 2.

Owen P. Smith
By Chester W. Brown
his Attorney

Patented Sept. 2, 1924. 1,507,439

United States Patent Office

Owen P. Smith, of Chicago, Illinois

Starting Cage for Racing Dogs

Application Filed May 16, 1921. Serial No. 470,080

To all whom it may concern:

Be it known that I, Owen P. Smith, a citizen of the United States, residing at the city of Chicago, in the county of Cook and State of Illinois, have invented certain new and useful Improvements in Starting Cages for Racing Dogs, of which the following is a specification.

This invention relates to starting cages for dogs in dog racing courses, and the object is to provide such a cage, in which the dogs will be held in separate stalls until the time to release them, and then they are all to be released simultaneously as the barrier is raised.

A special object of this present invention is to provide means of protecting the dogs against injury in the cage.

And another object is to provide efficient means for quickly removing the barrier out of the way of all of the dogs at the same time, giving all an equal opportunity to join in the chase.

With the above and other objects in view, my invention consists of the arrangement and combination of parts as hereinafter described and claimed, and while the invention is not restricted to the exact details of construction disclosed herein, yet, for the purpose of illustrating a particular embodiment thereof, reference is had to the accompanying drawings, in which like reference characters designate the same parts in the several views, and in which:

Figure 1 is a top plan view of one of my cages.

Figure 2 is an end elevation thereof.

In the construction of my said starting cage, I have preferably formed a frame work of timbers as 1, 1, and upon this frame work have attached wire screen 2, of a mesh suitable for the purpose. By means of the partitions 3, 3,

also covered with screen, I have divided said cage into the required number of individual stalls, as one for each dog entered in the race. At the rear of each stall I have provided a separate door, as 4 for each stall, suitably hinged and latched, for use in admitting the dogs to the respective stalls. To protect the dogs from injury against the wire screen, I have covered the lower part, up to about the height of the shoulder of the dogs, with suitable cloth or canvas 5, as shown.

At the front of the cage I have provided the door 6, opening outwardly and upwardly, being mounted by hinges as 7, 7 at the top of the cage, and having the latch 8 near the bottom of the cage to hold it in position when closed. For the purpose of opening said door 6 quickly, when the latch 8 is released, I have provided the timbers 9, 9, extending above, and out in front of the cage, as shown, and attached to the end thereof are the coiled tension springs 11, 11. The lower ends of the springs 11, 11, are attached in suitable eyes, as 10, 10 near the lower edge of the door 6.

By this construction, when it is desired to use the starting cage, the door 6 is closed, and fastened by the latch 8. The dogs are placed in their respective stalls through the doors 4, 4 at the rear. When it is desired to release the dogs for the race, the latch 8 is released, and the tension springs 11 raise the door 6 quickly above and out of the path of the dogs as they pass out of said cage through the front.

It will be apparent that other means may be employed to raise the door 6, and other means may be employed to protect the dogs against injury in the stalls, without departing from the spirit of my said invention.

Having thus described my said invention, what I claim and desire to secure by Letters Patent, is the following:

In a starting cage for racing dogs, a frame comprising a box-like structure divided into a plurality of compartments and comprising walls formed of wire mesh partially covered with fabric, individual rear doors for each of the compartments and a single front door hinged at its upper end to the top walls of the frame, divergent inclined members secured to the top of the said frame and extending upwardly and outwardly beyond the face of the front door and having their outer ends in the plane of the side walls

of the box-like structure, springs secured to the outer ends of said inclined members and to the door and lying in the plane of the hinges, and a latch at the bottom of the cage for coaction with the lower edge of the front door to hold the front door normally closed against the tension of said springs, said springs adapted to raise the front door upon release of the latch.

In testimony whereof, I have hereunto set my hand in the presence of two subscribing witnesses.

Owen P. Smith.

In presence of Chester W. Brown, Richard Green.

Defendant's Exhibit I

2—421

1921

CONTENTS:

1. Application 1 paper. OK
2. Filing Stamp, June 14, 1921
3. August 12, 1921
4. Amendment A, Feb. 9, 1922
5. Rejection, Apr. 29, 1922
6. Amendment B, Oct. 30, 1922
7. Rejection, Mar. 23, 1923
8. Amendment C, Jan. 17, 1924
9. Letter, May 15, 1924
10. AmendmentG, May 24, 1924
11. Notice of Suit, August 7, 1926
12. Notice of Suit, Oct. 5, 1926
13. Notice of Suit, Dec. 4, 1926
14. Notice of Suit, Jan. 15, 1927
15. Notice of Suit, July 14, 1927
16. Notice of Suit, July 14, 1927
17. Notice of Suit, July 28, 1927
18. Notice of Suit, Aug. 20, 1927

DEFENDANT'S EXHIBIT J.

390

DEPARTMENT OF COMMERCE.

United States Patent Office

To all persons to whom these presents shall come, Greeting:

This is to Certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the

Letters Patent of
Owen P. Smith,

Number 1,507,440, Granted September 2, 1924,

for

Improvement in Housings for Conveyer Cars and Tracks.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this second day of September in

Defendant's Exhibit J

the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States of America the one hundred and fifty-second.

(Seal)

Attest:

D. E. Wilson,
Chief of Division.

Thomas E. Robertson,
Commisioner of Patents.

Number (Series of 1915) (Ex'r's Book) 16—236
472,312
Div. 34 7. Patent No. 1507440
Name Owen P. Smith, Sep 2 1924
of Chicago
County of
State of Illinois.
Invention Housing for Conveyor Cars and Tracks.

DIVISION OF APP. No. ——— 191—

Parts of Application Filed

	Original	Renewed
Petition	May 16, 1921	....., 192
Affidavit	" ", 1921	....., 192
Specification	" ", 1921	....., 192
Drawing	" 24, 1921	....., 192
Photo Copy	, 192	....., 192
First Fee Cash $15,	May 16, 1921	....., 192
" " Cert.	, 192	....., 192
Appl. filed complete	May 24, 192	....., 192
Examined and Passed for Issue	July 2, 1924	....., 192
C. G. Jarboe	Exr. Div. 7	Ex. Div....
Notice of Allowance	July 3, 1924	....., 192
	By Commissioner.	By Commissioner.
Final Fee Cash $20	Aug. 7, 1924	....., 192
" " Cert.	, 192	....., 192
Patented	Sep 2 1924	, 192

Attorney Chester W. Brown, 514 W. Van Buren Street Chicago, Ill.

Associate Attorney Geo. C. Shoemaker, 509-515 McGill Bldg. 908 G St. N. W. City

(No. of Claims Allowed 3) Print Claims 1 in O. G. (Cl. 46-73)

Title as Allowed Housing for Conveyer Cars and Tracks.

Defendant's Exhibit J

Telephone Harrison 7441

Patents Experiment Work Models

CHESTER W. BROWN & CO.

Patent Attorneys

514 W. Van Buren St.

Chicago

May 13th, 1921.

$15.00 Rec'd.
May 16, 1921
C. C. U. S. Pat. Office

Commissioner of Patents,
Washington, D. C.

Sir:

Herewith we hand you application papers for Patent for Owen P. Smith, for Housing for Conveyor Cars and Track, together with Fifteen Dollars for first Government Fees.

The drawings accompany under separate cover.

Resp'y,
Chester W. Brown,

PETITION WITH POWER OF ATTORNEY.

Mail Room
May 16 1921
U. S. Patent Office

To the Commissioner of Patents:—

Your petitioner, Owen P. Smith, a citizen of the United States and a resident of the City of Chicago, in the County of Cook and State of Illinois, and whose Post Office Address is at No. 514 W. Van Buren Street in said City, prays that Letters Patent may be granted to him for the improvements in Housing for Conveyor
440 Cars and Track set forth in the annexed specification.

And he hereby appoints Mr. Chester W. Brown, of No. 514 W. Van Buren Street in said City of Chicago, State of Illinois, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Defendant's Exhibit J

Signed at the City of Chicago, County of Cook and State of Illinois, this 3rd day of May, 1921.

Owen P. Smith.

(25 cent Documentary Stamp)

FMH

SPECIFICATION.

To all whom it may concern:—

Be it known that I, Owen P. Smith, a citizen of the United States, residing at the city of Chicago, in the county of Cook and State of Illinois, have invented certain new and useful Improvements in Housings for Conveyer Cars and Tracks, of which the following is a specification.

My invention relates to means for concealing the track and conveyer car in a mechanical lure conveyer for dog racing courses.

The object of the present invention is to provide a suitable housing for concealing the track and conveyor car from the dogs, and which shall form a continuous housing around the race course, with a continuous open- upon the side toward the course.

Another object is to provide suitable means for supporting the side of the housing toward the track above the opening in said housing.

With the foregoing, and other objects in view, my invention consists of the arrangement and combination of parts as hereinafter described and claimed; and while the invention is not restricted to the exact details of the construction disclosed herein, yet, for the purposes of illustrating a particular embodyment thereof, reference is had to the accompanying drawings in which like reference characters designate the same parts in the several views, and in which,

Figure 1 is a plan view of a dog racing course having my improved housing arranged thereabout.

Figure 2 is a sectional view of the housing taken along the line 3—3 in Figure 1.

In the accompanying drawings, 1 represents a race course suitable for dogs to race upon, having my improved housing 2 installed around the outer circumference thereof. At 19 I have provided a siding and switch suitable for switching the car upon the side track and to the tower and den thereunder 20.

Defendant's Exhibit J

In the installation of my said housing, there is preferably made a slight excavation below the ground line 3. Posts as 4 and 5 are set into the ground at suitable distances apart around the entire course, and these are connected together by the cross ties 7, 7, and the timbers 6, 6. The posts 5, 5 extend slightly above the ground line, while the posts 4, 4 extend above the topmost part of the housing. Rails to form a track as 15, 15 are laid upon the cross ties, and a suitable conductor as 9 also provided for the car. To form the frame work of the inner side and roof, I employ the timbers 8 and 10 respectively, and excepting for a continuous opening 14 on the side toward the race course, the entire interior of the frame work is lined with boards as 11. For supporting the inner edge of the roof, and the inner side of the housing above the opening 14, I have provided truss rods as 12, having one end attached to the upper portion of the posts 4 above the roof, and the other end attached to the upper portion of the timbers 8, with a turnbuckle in between said ends to provide means for adjustment to keep the roof always at the desired elevation.

At 16 I have shown a conveyer car upon said rail track, with an arm 17 extending outwardly toward the middle of the race course, with a traction wheel 18 at the end thereof resting upon the ground. At 22 I have provided the door shown in the side of the housing, which is provided with any suitable catch and release (not shown) for holding said door open during the race, and closing it when the car has passed through it going upon the side track to the den.

In the foregoing construction, it will be seen that the entire track, and conveyer car are concealed from the dogs, the only portions being exposed to view are the arm and parts mounted thereon. When the race is finished, the car is switched upon the siding, and passes through the door 22, which is closed to conceal the entire equipment.

Having thus described my invention, what I claim and desire to secure by Letters Patent, is the following:—

1st. In a covering for concealing a conveyor car and rail track, the combination of a frame work of timbers covered with boards at the sides and above said track and a continuous opening formed in one side of the covering.

Defendant's Exhibit J

2nd. In a housing for covering conveyor cars and tracks, the combination of posts at the sides, timbers above and on the inside, boards upon said posts and timbers, a continuous opening in one side, and truss rods for supporting the side and roof above said opening.

3rd. In a housing to cover a track and conveyor car having a member 17, the combination of posts, timbers connected to said posts to form a frame, boards enclosing said housing, a continuous opening for member 17 along one side of said housing and means for supporting the side and roof above said opening.

4th. In a housing for covering conveyor cars and tracks, the combination of posts, timbers attached to said posts to form a frame, a continuous opening on one side of said housing, truss rods for supporting the side above said opening and a door for concealing the conveyor car.

see Pickinger 1125383 Jan 19, 1915.
104
176

In Testimony Whereof, I have hereunto set my hand in the presence of two subscribing witnesses.

In Presence of—
Chester W. Brown,
Richard Green.

Owen P. Smith.

OATH.

State of Illinois, }
County of Cook. } ss.

Owen P. Smith, the above named petitioner, being sworn, deposes and says; that he is a citizen of the United States, and resident at 514 W. Van Buren Street, in the City of Chicago, in the County of Cook and State of Illinois; that he verily believes himself to be the original, first and sole inventor of the improvement in Housing for Conveyor Cars described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or Patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the

Defendant's Exhibit J

United States for more than two years prior to this application, that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by him or his representatives or assigns in any country foreign to the United States.

Owen P. Smith.

Sworn to and subscribed before me this 15th day of May, 1921.

Charles H. Knight,
Notary Public.

(Seal)

My Commission Expires July 2nd, 192..

WMN

2—179

Address only
The Commissioner of Patents
Washington, D. C.

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

May 20, 1921.

Sir:

I have to acknowledge the receipt of your incomplete application for patent, the title of which is improvement in Housing for Conveyor Cars and Track filed May 16, 1921, accompanied by

Petition,
Affidavit,
Specification,
Informal Drawing,
First fee of $15,

This application is informal for the reason that the proper drawing is required to complete the same.

You are advised that a drawing, illustrating two figures, accompanied this application, but apparently does not belong with same, and for this reason you are re-

quested to advise the Office as to what disposition you wish made of the improper drawing.

Very respectfully,
T. E. Robertson,
~~R. F. Whitehead,~~
Commissioner of Patents.

Owen P. Smith
Chester W. Brown,
514 W. Van Buren Street,
Chicago, Ill.

*This informal application must be completed within one year from the filing date above mentioned.

Div. 7 Room 312 2—260 V Paper No. 2

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR.
United States Patent Office
Washington

Feb. 28, 1922.
U. S. Patent Office
Feb. 28, 1922
Mailed

Chester W. Brown
514 W. Van Buren St.
Chicago, Ill.

Please find below a communication from the Examiner in charge of the application of O. P. Smith, filed May 24, 1921, Housing for Conveyor Cars and Tracks, Serial No. 472,312.

Thomas E. Robertson,
Commissioner of Patents.

The drawing has been admitted for examination only, the lines are rough and blurred and the paper is mutilated. A new drawing is required.

Page 3, line 7, the "conductor 9" is not shown in the drawings, line 9, "employ" is misspelled, line 22, reference character "21" should probably be 18.

Defendant's Exhibit J

The claims are rejected as indefinite and as aggregations. The same objections occur in each claim and taking claim 3 as an example; the opening in the side of the housing has been claimed positively. "A continuous opening" cannot be made a positive element of a claim, an opening is intangible and in the present claim the housing should be described as "having" or "provided with a continuous opening in one side of said housing".

In support of the above requirement applicant's attention is directed to:

Ex parte Davin, 1902 C. D. 251; 100 O. G. 452.

Further, no relation exists in the claim between the various parts nor has the relative location of the parts been defined. The claim fails to state the functional dependence between the car and the side of the housing having the continuous opening. It is suggested that in line 2, after "car" the phrase **having a laterally extending arm** be inserted. Line 4 should be amended to describe the side having the continuous opening as having such opening **for the laterally extending arm.**

The claims, if amended as required above, would probably be allowable in view of the present state of the art.

C. G. Jarboe,
Examiner.

E

Amendment
A#3

Mail Room
Jul 18 1922
U. S. Patent Office
Div. 7, Room 312,
Application O. P. Smith,
filed May 24, 1921
Housing for Conveyor Cars,
and Tracks
Serial No. 472,312.

U. S. Patent Office
Jul 20 1922
Division VII

Chicago, July 15th, 1922.

Commissioner of Patents:—

In response to the Examiners Letter of Feby. 28, 1922 in the above application,

Ex See 1st. Amend the drawing by showing a "third" rail, (if same is not now shown) parallel with rails 15, 15, and midway between them, and number such rail as conductor 9".

Defendant's Exhibit J

2nd. At middle of line 9 page 3 correct spelling of word "employ" appearing therein.

3rd. At line 22 page 3, correct reference character "21" to read "18".

4th. Strike out the claims, and insert in lieu thereof the following.

Canceled per B

1. A continuous covering for rail tracks and the like, supported upon posts set in the ground at either side of said track, and formed by timbers attached to said posts, and boards attached to said timbers and posts to form a continuous covering having a continuous opening in one side thereof, substantially as shown and for the purposes described.

A¹

1. B 2. In a housing for covering tracks and cars having laterally extending arm operated upon said track, the combination of posts set in the ground at the sides of said track, timbers attached to said posts to form a frame, and boards attached to said timbers and posts to form a continuous enclosure above said track and having a continuous opening in one side of said housing adapted to permit extension of the laterally extending arm therethrough, and truss rods attached to the closed side of the housing adapted to support the side of said housing above the said continuous opening.

A¹

add B¹ Cls 243

3. In a housing to cover a track and conveyor car having a laterally extending arm, the combination of posts set in the ground at either side of said track to support a frame work, timbers attached to said posts to form a frame, boards attached to said timbers and frame to form a continuous housing having a continuous opening therein, provided to permit operation of the laterally extending arm aforesaid and means for supporting the roof and side of the housing above said continuous opening aforesaid.

Canceled per B

4. In a continuous housing for concealing a rail track and conveyor car having a laterally extending arm, and operated upon said track, the combination of suitable posts upon either side of said track, timbers attached to said posts to form a frame and boards attached to said frames to form a continuous covering above and on both sides of said track and having a continuous opening in one side through which the laterally extending arm mounted upon the car may pass, and a door at a suitable place in the side of said housing to

permit said arm, and any object mounted thereon to pass therethrough.

REMARKS.

In the foregoing amendment, applicant has endeavored to correct the objections pointed out by the Examiner, and it is thought that the present claims are allowable.

Applicant has ordered copy of present drawing, and will have new drawing prepared and filed before final allowance of the application, in compliance with requirement of examiner.

Respectfully Submitted,
Chester W. Brown,
Attorney for Applicant.

Letter to Office
$4

Mail Room
Jul. 18, 1922
U. S. Patent Office
Div. 7, Room 312.
Application O. P. Smith,
Filed May 24, 1921,
Housing for Conveyor Cars and Tracks, C
Serial No. 472,312.

Chicago, Ill. July 15th, 1922.

Chief Draftsman,
Patent Office, Washington, D. C.

Sir:

In the above application, will you kindly correct drawing to show the "third Rail Conductor" midway between the rails 15, 15, in the drawings, and number such third rail conductor as "9 on the drawing, as required by the examiner.

Upon receipt of your estimate of cost of above correction I will be pleased to remit the amount required.

Respectfully,
Chester W. Brown,
Attorney for Applicant.

O. K.
GKE

Defendant's Exhibit J

Draftsman's Division 2—111

Letter to Office
$5
C

Address only
The Commissioner of Patents
Washington, D. C.

DEPARTMENT OF THE INTERIOR.
United States Patent Office
Washington, D. C.

July 28, 1922.

$1.15 Rec'd.
Aug. 25, 1922 E
C. C. U. S. Pat. Office

Sir:

Referring to your order dated July 15, 1922 for correction of drawing in the application of Owen P. Smith Div. 7 Serial No. 472312, filed May 24, 1921 you are advised that the cost of correcting the drawing in this application will be $1.15.

When corrections are made, prints of the corrected sheets should be ordered, cost 15c each, to ascertain whether the changes made are correct.

By direction of the Commissioner.

Very respectfully,
Wm. I. Wyman,
Chief Clerk.
Per DWE

Letter No. 131998
Chester W. Brown,
514 W. Van Buren St.,
Chicago, Ill.

For diagram of Owen P. Smith Patent, Serial No. 472,312 see Defendant's Exhibit "J" page 254.

Defendant's Exhibit J

Div. 7 Room 312 2—60 V Paper No. 6

Address only "The Commissioner of Patents, Washington, D. C." and not any official by name.

All communications respecting this application should give the serial number date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR.

United States Patent Office
Washington

Dec. 20, 1922.

Chester W. Brown
514 W. Van Buren St.
Chicago, Ill.

U. S. Patent Office
Dec. 20, 1922
Mailed

Please find below a communication from the Examiner in charge of the application of O. P. Smith, filed May 24, 1921, Housing for Conveyor Cars and Tracks, Serial No. 472,312.

Thomas E. Robertson,
Commissioner of Patents.

Case reconsidered as amended July 18, 1922.
Claims 1 and 3 are rejected on patent
729,120 Bertram May 26, 1903 191-49
as the contract carriage in this patent is considered the equivalent of the conveyor car.

Claim 4 is rejected on patent to Bertram as there would be no invention involved in placing a door in Bertram's cover.

As now advised, claim 2 is allowed.

C. G. Jarboe,
Examiner.

D

Assoc. Atty.

ASSOCIATE POWER OF ATTORNEY.

U. S. Patent Office
May 1, 1923
Division VII.

U. S. Patent Office
May 1, 1923
Record Room

Hon. Commissioner of Patents,

Sir:

Please recognize Geo. C. Shoemaker, Rooms 509-515 McGill Building, 908 G Street Northwest, Washington, D. C., as associate in the matter of the application of O. P.

Defendant's Exhibit J

Smith an improvement in Housing for Conveyor Cars & Tracks filed May 24, 1921 Serial No. 472,312 Room No. 312.
(Documentary Seal)

Respectfully,

Chester W. Brown.

Amendment B

#8

Application Room
May 4 1923
U. S. Patent Office
Div. 7, Room 512,
Owen P. Smith,
Housing for Conveyor Cars
and Tracks,
Filed May 24, 1921,
Serial No. 472,312.

U. S. Patent Office
May 5 1923
Division VII

Washington, D. C., May 3, 1923.

Honorable Commissioner of Patents,

Sir:—

In response to the official action of December 20, 1922, the above entitled application is hereby amended as follows:—

Cancel claims 1, 3, and 4.

Re-number claim 2 as 1, and insert the following:—

---

2. In a continuous housing for concealing a rail track and conveyer car having a laterally extending arm, posts on either side of the track, timbers attached to the upper and lower ends of the posts to form a frame, the upper timbers being inclined upwardly, adjustable stay rods connecting the upper ends of the posts to support the inner side wall of the frame, boards attached to the frame to form a covering, one side of the covering having a continuous opening therein through which the arm extends.

per C

B¹

3. In a continuous housing for concealing a rail track and conveyer car having a laterally extending arm, base timbers below the ground surface, having rails thereon, posts on each side of the rails, connected to the base timbers and extending upwardly therefrom, the inner post being of less height than the outer post, inclined timbers connecting upper ends of the posts, and screw threaded adjustable stay-rods

Defendant's Exhibit J

secured to the upper end of the outer post and supporting the inner post therefrom. sig.

REMARKS.

The two new claims submitted herewith are believed to patentably define over the reference to Bertram. In this reference we do not find the construction of the frame as called for by the claims nor do we find the inner side wall of the frame supported in the manner called for by the claims. It is thought, therefore, that the case is now in condition for allowance.

Respectfully submitted,
Geo. C. Shoemaker,
D. A. G.
Attorney for Applicant.

Div. 7 Room 312 2—260 RP Paper No. 9

Address only "The Commissioner of Patents, Washington, D. C." and not any official by name.

All communications respecting this application should give the serial number date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR.
United States Patent Office
Washington

Dec. 14, 1923.

Geo. C. Shoemaker,
McGill Bldg.,
Washington, D. C.

Patent Office
Dec. 14, 1923
Mailed

Please find below a communication from the Examiner in charge of the application of O. Smith, Housing, etc., May 24, 1921, 472,312.

Thomas E Robertson,
Commissioner of Patents.

Amended May 4, 1923.

Claim 2 is rejected as vague and indefinite, as "posts" are referred to in line 2 of the claim, and "the post" in line 4, but it is not apparent which post is referred to in line 4.

Defendant's Exhibit 7

Claim 3 appears to be allowable, and claim 1 stands allowed.

C. G. Jarboe,
Examiner, Division 7.

D.

Amendment C

Application Div.
Jan. 4, 1924
U. S. Patent Office
Div. 7, Room 312,
Owen Smith.
Housing for Conveyor Cars and Tracks,
Serial No. 472,312,
Filed May 24, 1921.

U. S. Patent Office
Jan. 5, 1924
Division VII
Washington, D. C.,

January 4, 1924.

Hon. Commissioner of Patents,

Sir:

Responsive to the Official action of December 14, 1923, amendment is hereby made as follows:

Claim 2, line 4, change "post" to—posts—.

REMARKS.

The above correction is believed to relieve the claim of informality and place the same in condition for allowance, a formal notice of which is solicited.

Respectfully,
Geo. C. Shoemaker.

Defendant's Exhibit J

Div. 7., R. F. P.

2—181 Serial No. 472,312

Address only
The Commissioner of Patents
Washington, D. C.

IN REMITTING THE FINAL FEE GIVE THE SERIAL NUMBER AT THE HEAD OF THIS NOTICE.

DEPARTMENT OF THE INTERIOR.

United States Patent Office

Washington

July three, 1924.

Patent Office
Jul. 3, 1924
Mailed

O. P. Smith

Sir: Your Application for a patent for an Improvement in Housing for Conveyor Cars and Tracks, filed May 24, 1921, has been examined and Allowed. 3 claims.

The final fee, Twenty Dollars, must be paid not later than Six Months from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed with an additional fee of $20, under the provisions of Section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be under taken until after payment of the necessary fee.

When you send the final fee you will also send, Distinctly and Plainly Written, the name of the Inventor, Title of invention, and Serial Number as Above Given, Date of Allowance (which is the date of this circular), Date of Filing, and, if assigned, the Names of the Assignees.

If you desire to have the patent issue to Assignees, an assignment containing a Request to that effect, together with the Fee for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the patent uncertified copies of the drawings and specifications may be purchased at the price of Ten Cents Each. The money should accompany the order. Postage stamps will not be received.

UNCERTIFIED CHECKS WILL NOT BE ACCEPTED.

Defendant's Exhibit J

Final fees will Not be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully,
Thomas E. Robertson,
Commissioner of Patents.

Geo. C. Shoemaker,
509 McGill Bldg.,
Washington, D. C.

2—327.

Final Fee Paid to United States Patent Office.

(Be careful to give correct Serial No.)

$20.00 Rec. 'd.
Aug. 7, 1924
C. C. U. S. Patent Office
Serial No. 472312
Inventor: Owen P. Smith
Patent to be Issued to As per record
Name of Invention, as Allowed: Housing for Conveyor Cars & Tracks
Date of Payment: August 7-1924
Fee: Twenty Dollars
Date of Filing: May 24-1921
Date of Circular of Allowance: July 3-1924

The Commissioner of Patents will please apply the accompanying fee as indicated above.

Chester W. Brown,
Attorney.

Send Patent to
Mr. Chester W. Brown
318 W. Wesley St.,
Jackson, Mich.

Defendant's Exhibit J

UNITED STATES DISTRICT COURT.
Northern District of Ohio (Eastern Division)

Mail Room
Aug. 7, 1926
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (41 42 Stat. L.....), you are advised that there was on the 5th day of August, 1926, in this court an action, suit, or proceeding No. 1982, entitled:
Name Owen P. Smith, Plaintiff,
Address Miami, Florida,
versus
Name W. N. Steinman, et al. Partners, etc., Defendant,
Address 204 Medford Bldg. 21 Main St.,
brought upon the following patents:
D's

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	do
3	1,410,842	Mch. 28, 1922	do
4	1,507,439	Sep. 2, 1924	do
5	1,507,440	Sep. 2, 1924	do
6	1,591,569	July 6, 1926	do

In the above-entitled case, on the.....day of....., 192 , the following patents have been included by.....(insert amendment, answer cross bill, or other pleading):

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

Defendant's Exhibit J

. . . . . .

. . . . . .

In witness whereof I have affixed my hand this 5th day of August, 1926, at Cleveland, Ohio.

B. C. Miller,
Clerk of said Court.
By C. A. Wilder Deputy Clerk.

UNITED STATES DISTRICT COURT.
Southern District of Ohio

Mail Room
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (~~41~~ 42 Stat. L. . . . .), you are advised that there was filed on the 30th day of September, 1926, in this court an action, suit, or proceeding No. 464, entitled:

Name Owen P. Smith, Plaintiff,
Address Miami, Dade County, Florida

versus

Name Franklin Kennel Club, Limited, Edward H. McGrath, Thomas H. Buxton, Edward Siefert, William B. Wheeland, Reinhart Wilke, and Robert Dienst, Defendants,
A°
Address Grove City, Franklin County, Ohio

brought upon the following patents:

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	Owen P. Smith
3	1,410,842	March 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith
5	1,507,440	Sept. 2, 1924	Owen P. Smith
6	1,591,569	July 6, 1926	do

In the above-entitled case, on the . . . . . day of . . . . . , 192 , the following patents have been included by . . . . . (insert amendment, answer cross bill, or other pleading):

Defendant's Exhibit J

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness Wheerof I have affixed my hand this 4th day of October, 1926, at Columbus, Ohio.

Harry F. Rabe,
Clerk of said Court.

UNITED STATES DISTRICT COURT.
Eastern District of Louisiana

Mail Room
Dec. 4, 1926
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (41 42 Stat. L.....), you are advised that there was filed on the 1st day of December, 1926, in this court an action, suit, or proceeding No. 18,596, entitled.

Name Owen P. Smith, Plaintiff,
Address Miami, Florida

versus

Name American Electric Rabbit Racing Assn. Inc., Et Als., Defendants,
Address New Orleans, La.

brought upon the following patents:

E[illegible]

Defendant's Exhibit J

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	do
3	1,410,842	Mch. 28, 1922	do
4	1,507,439	Sep. 2, 1924	do
6	1,591,569	July 6, 1926	do

In the above-entitled case, on the.....day of.. ....., 192 , the following patents have been included by.....(insert amendment, answer cross bill, or other pleading):

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness Wheerof I have affixed my hand this 2nd day of December, 1926, at New Orleans, La.

H. J. Carter,
Clerk of said Court.

UNITED STATES DISTRICT COURT.
Eastern District of Louisiana

Mail Room
Jan. 15, 1927
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (41 42 Stat. L.....), you are advised that there was filed on the 12th day of January, 1927, in this court an action, suit, or proceeding No. 18,651, entitled:

Defendant's Exhibit J

Name Owen P. Smith, Plaintiff,
Address Miami, Dade County, Florida.
versus
Name Louisiana Greyhound Club, Incorporated, et als, Defendants,
Address Jefferson Parish, Louisiana
brought upon the following patents:
B[5]

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sep. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	do
3	1,410,842	Mch. 28, 1922	do
4	1,507,439	Sep. 2, 1924	do
5	1,507,440	Sep. 2, 1924	do
6	1,591,569	July 6, 1926	do

In the above-entitled case, on the ..... day of ....., 192 , the following patents have been included by ..... (insert amendment, answer cross bill, or other pleading):

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness Whereof I have affixed my hand this 13th day of January, 1927, at New Orleans, Louisiana.

H. J. Carter,
Clerk of said Court.

Defendant's Exhibit J

UNITED STATES DISTRICT COURT.
Northern District of Illinois

Mail Room
Jul. 11, 1927
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (~~41~~ 42 Stat. L. . . . .), you are advised that there was filed on the 8th day of June, 1927, in this court an action, suit, or proceeding No. 7164, entitled:
Name Hannah M. Smith, etc, Plaintiff,
Address Dade County, Florida.

versus

Name Ogden Kennel Club, et al, Defendant,
Address Chicago, Illinois.
brought upon the following patents:
S[5]

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	Owen P. Smith.
3	1,410,842	March 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith.
5	1,507,440	Sept. 2, 1924	Owen P. Smith
6	1,591,569	July 6, 1926	Owen P. Smith

In the above-entitled case, on the . . . . . day of . . . . . , 192 , the following patents have been included by . . . . . (insert amendment, answer cross bill, or other pleading):

Patent No.	Date of Patent	Patentee
1.	. . . . .	. . . . .
2.	. . . . .	. . . . .
3.	. . . . .	. . . . .
4.	. . . . .	. . . . .
5.	. . . . .	. . . . .

In the above-entitled case the following decision has been rendered or decree issued:

Defendant's Exhibit J

.....

.....

In Witness Whereof I have affixed my hand this 12th day of July, A. D., 1927, at Chicago Illinois.

Charles M. Bates,
Clerk of said Court.

UNITED STATES DISTRICT COURT.
Northern District of Illinois

Mail Room
Jul 1927
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (41 42 Stat. L.....), you are advised that there was filed on the 8th day of June, 1927, in this court an action, suit, or proceeding No. 7165, entitled:

Name Hannah M. Smith, etc., Plaintiff,
Address Dade County, Florida

versus

Name Edward H. Wait, et al. Defendant.
Address Chicago, Illinois.

brought upon the following patents:

Ps

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	Owen P. Smith
3	1,410,842	March 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith
5	1,507,440	Sept. 2, 1924	Owen P. Smith
6	1,591,569	July 6, 1926	Owen P. Smith

In the above-entitled case, on the.....day of..... , 192 , the following patents have been included by.....(insert amendment, answer, cross bill, or other pleading):

Defendant's Exhibit J

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness Whereof I have affixed my hand this 12th day of July, A. D. 1927, at Chicago, Illinois.

Charles M. Bates,
Clerk of said Court.

UNITED STATES DISTRICT COURT.
Southern District of Illinois.

Mail Room
Jul. 28, 1927
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L.....), you are advised that there was filed on the 21st day of July, 1927, in this court an action, suit, or proceeding No. 616, entitled:

Name Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, Plaintiff,
Address Miama, Florida,

versus

Name Peoria Kennel Club, a Corporation of Illinois, et al., Defendants,
Address Peoria, Illinois.

brought upon the following patents:

J'

Defendant's Exhibit J

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	" " "
3	1,410,842	March 28, 1922	" " "
	1,507,439	Sept. 2, 1924	" " "
4	1,507,440	Sept. 2, 1924	" " "
	1,591,569	July 6, 1926	" " "
5	1,630,811	May 31, 1927	" " "
	1,630,812	May 31,1927	" " "

In the above-entitled case, on the 21st day of July, 1927, the following patents have been included by.....(insert amendment, answer cross bill, or other pleading):

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness Whereof I have affixed my hand this 26th day of July, 1927, at Peoria, Illinois.

S. T. Burnett,
Clerk of said Court.

UNITED STATES DISTRICT COURT.
District of Ohio

Mail Room
Aug. 20, 1927
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (41 42 Stat. L.,.....), you are advised that there was

Defendant's Exhibit J

filed on the 19th day of August, 1927, in this court an action, suit, or proceeding No. 485 Eq, Entitled:
Name Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, Plaintiff,
Address County of Dade, Florida

versus

Name Springdale Amusement Park, Limited et al, Defendant,
Address near the City of Hamilton, Ohio,
brought upon the following patents:
L'

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	Owen P. Smith
3	1,410,842	March 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith
	1,507,440	Sept. 2, 1924	Owen P. Smith
5	1,591,569	July 6, 1926	Owen P. Smith
	1,630,811	May 31, 1927	Owen P. Smith
	1,630,812	May 31, 1927	Owen P. Smith

In the above-entitled case, on the.....day of..... , 192 , the following patents have been included by.....(insert amendment, answer, cross bill, or other pleading):

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness Whereof I have affixed my hand this 19th day of August, 1927, at Cincinnati, Ohio.

Harry F. Rabe,
By T. V. Lamb, Deputy.
Clerk of said Court.

DEFENDANTS' EXHIBIT "J"

SMITH PATENT NO. 1,507,440

SEPTEMBER 2, 1924.

Sept. 2, 1924. 1,507,440

O. P. SMITH

HOUSING FOR CONVEYER CARS AND TRACKS

Filed May 24, 1921

FIG. 1

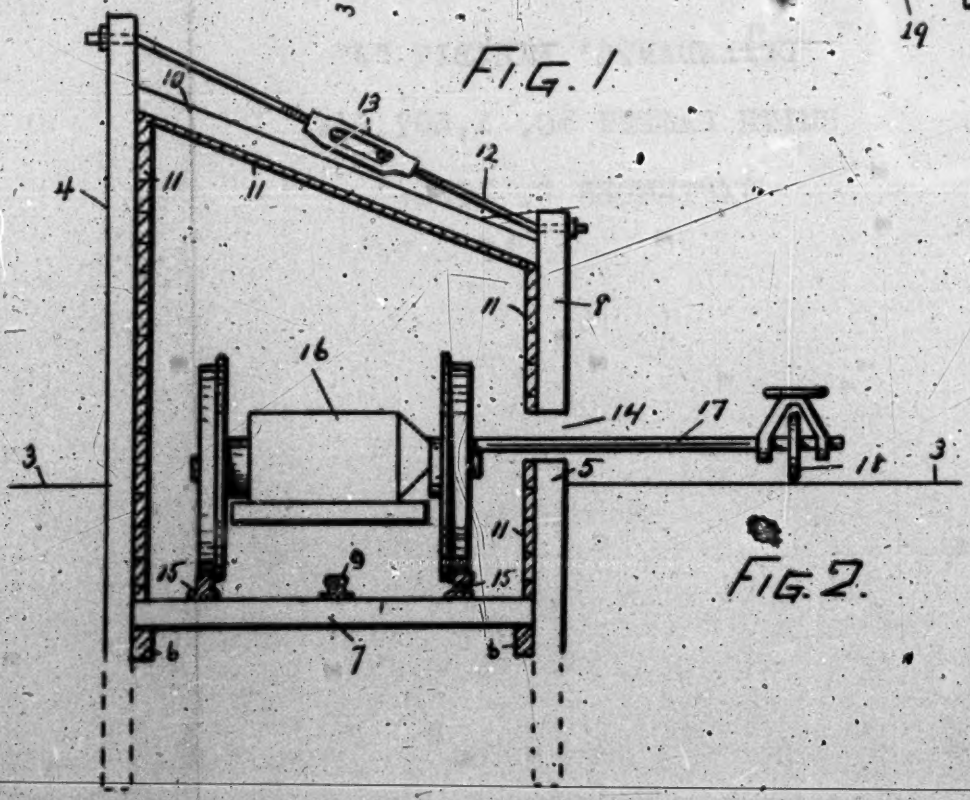


FIG. 2.

Owen P. Smith
By Chester W. Brown
his Attorney

Patented Sept. 2, 1924. 1,507,440

United States Patent Office

Owen P. Smith, of Chicago, Illinois

Housing for Conveyer Cars and Tracks

Application filed May 24, 1921. Serial No. 472,312

To all whom it may concern:

Be it known that I, Owen P. Smith, a citizen of the United States, residing at the city of Chicago, in the county of Cook and State of Illinois, have invented certain new and useful Improvements in Housings for Conveyer Cars and Tracks, of which the following is a specification.

My invention relates to means for concealing the track and conveyer car in a mechanical lure conveyer for dog racing courses.

The object of the present invention is to provide a suitable housing for concealing the track and conveyer car from the dogs, and which shall form a continuous housing around the race course, with a continuous opening upon the side toward the course. Another object is to provide suitable means for supporting the side of the housing toward the track above the opening in said housing.

With the foregoing, and other objects in view, my invention consists of the arrangement and combination of parts as hereinafter described and claimed; and while the invention is not restricted to the exact details of the construction disclosed herein, yet, for the purposes of illustrating a particular embodiment thereof, reference is had to the accompanying drawings in which like reference characters designate the same parts in the several views, and in which,

Figure 1 is a plan view of a dog racing course having my improved housing arranged thereabout.

Figure 2 is a sectional view of the housing taken along the line 3—3 in Figure 1.

In the accompanying drawings, 1 represents a race cource suitable for dogs to race upon, having my improved housing 2 installed around the outer circumference thereof.

At 19 I have provided a siding and switch suitable for switching the car upon the side track and to the tower and den thereunder 20.

In the installation of my said housing, there is preferably made a slight excavation below the ground line 3. Posts as 4 and 5 are set into the ground at suitable distances apart around the entire course, and these are connected together by the cross ties 7, 7, and the timbers 6, 6. The posts 5, 5 extend slightly above the ground line, while the posts 4, 4 extend above the topmost part of the housing. Rails to form a track as 15, 15 are laid upon the cross ties, and a suitable conductor as 9 also provided for the car. To form the frame work of the inner side and roof, I employ the timbers 8 and 10 respectively, and excepting for a continuous opening 14 on the side toward the race course, the entire interior of the frame work is lined with boards as 11. For supporting the inner edge of the roof, and the inner side of the housing above the opening 14, I have provided truss rods as 12, having one end attached to the upper portion of the posts 4 above the roof, and the other end attached to the upper portion of the timbers 8, with a turnbuckle in between said ends to provide means for adjustment to keep the roof always at the desired elevation.

At 16 I have shown a conveyer car upon said rail track, with an arm 17 extending outwardly toward the middle of the race course, with a traction wheel 18 at the end thereof resting upon the ground. At 22 I have provided the door shown in the side of the housing, which is provided with any suitable catch and release (not shown) for holding said door open during the race, and closing it when the car has passed through it going upon the side track to the den.

In the foregoing construction, it will be seen that the entire track, and conveyer car are concealed from the dogs, the only portions being exposed to view are the arm and parts mounted thereon. When the race is finished, the car is switched upon the siding, and passes through the door 22, which is closed to conceal the entire equipment.

Having thus described my invention, what I claim and desire to secure by Letters Patent, is the following:

1. In a housing for covering tracks and cars having laterally extending arm operated upon said track, the combina-

tion of posts set in the ground at the sides of said track, timbers attached to said posts to form a frame, and boards attached to said timbers and posts to form a continuous enclosure above said track, and having a continuous opening in one side of said housing adapted to permit extension of the laterally extending arm therethrough, and truss rods attached to the closed side of the housing adapted to support the side of said housing above the said continuous opening.

2. In a continuous housing for concealing a rail track and conveyor car having a laterally extending arm, posts on either side of the track, timbers attached to the upper and lower ends of the posts to form a frame, the upper timbers being inclined upwardly, adjustable stay rods connecting the upper ends of the posts to support the inner side wall of the frame, boards attached to the frame to form a covering, one side of the covering having a continuous opening therein through which the arm extends.

3. In a continuous housing for concealing a rail track and conveyor car having a laterally extending arm, base timbers below the ground surface, having rails thereon, posts on each side of the rails, connected to the base timbers and extending upwardly therefrom, the inner post being of less height than the outer post, inclined timbers connecting upper ends of the posts, and screw threaded adjustable stay-rods secured to the upper end of the outer post and supporting the inner post therefrom.

In testimony whereof, I have hereunto set my hand in the presence of two subscribing witnesses.

Owen P. Smith.

In presence of Chester W. Brown, Richard Green.

DEFENDANT'S EXHIBIT J

2—421

1921

Contents:

46. Games and Toys,
Arenas.
1. Application 2 papers.
2. Rej. Feb. 28, 1922.
3. Amendment A. July 18, 1922.
4. Letter to Office July 18, 1922.
5. Letter to Office Aug. 25, 1922.
6. Rej. Dec. 20—1922.
7. Assoc. Atty. May 1, 1923.
8. Amendment B May 4, 1923.
9. Rej. Dec. 14, 1923.
10. Amendment C Jan. 4, 1924.
11. Notice of Suit Aug. 7—1926.
12. Notice of Suit Oct. 5—1926.
13. Notice of Suit Dec. 4—1926.
14. Notice of Suit Jan. 15—1927.
15. Notice of Suit July 14—1927.
16. Notice of Suit July 14—1927.
17. Notice of Suit July 28—1927.
18. Notice of Suit Aug. 20—1927.

DEFENDANTS' EXHIBIT "K"

PINARD PATENT NO. 362,396.

MAY 3, 1887.

(No Model.) 2 Sheets—Sheet 1

J. A. A. PINARD.

DEVICE FOR TESTING THE SPEED OF HOUNDS.

No. 362,396. Patented May 3, 1887

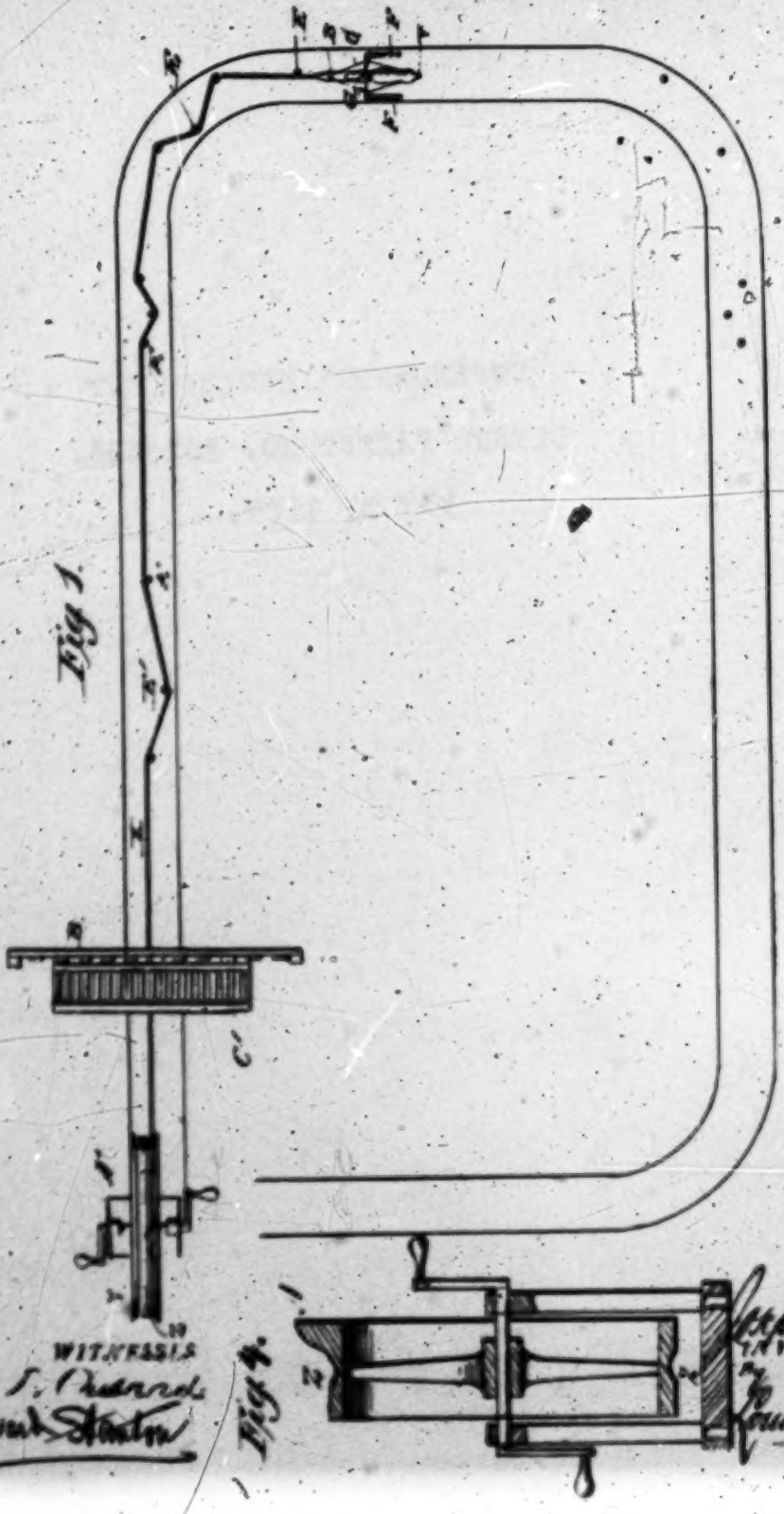


Fig. 1.

Fig. 2.

WITNESSES

F. S. Barrard

Edward Stanton

INVENTOR

Louis Bagger & Co

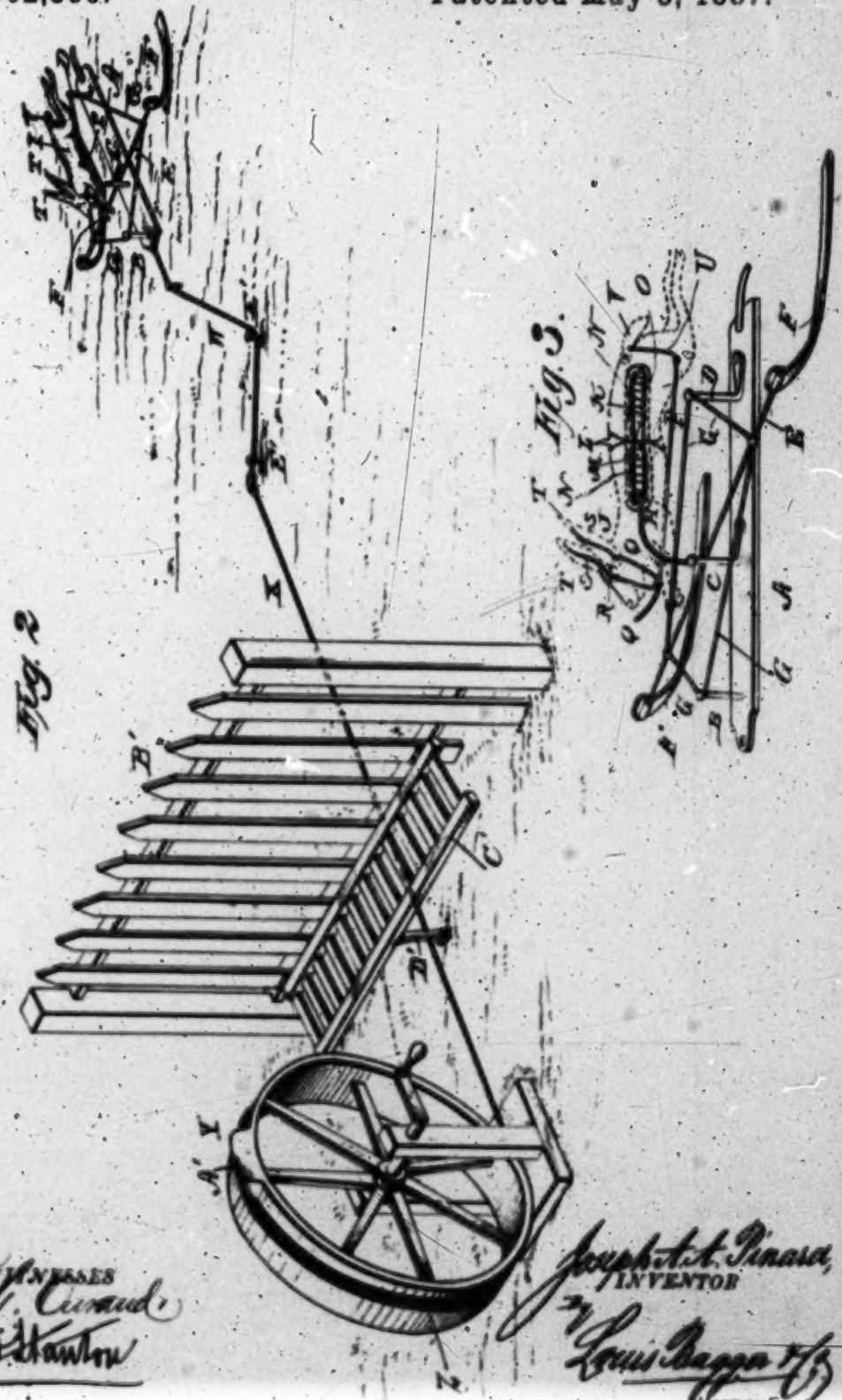
Attorneys.

(No Model.) 2 Sheets—Sheet 2.

J. A. A. PINARD

DEVICE FOR TESTING THE SPEED OF HOUNDS.

No. 362,396. Patented May 3, 1887.



WITNESSES
F. L. Ciseau
Edward Hawtow

Joseph A. A. Pinard,
INVENTOR
By Louis Bagg & Co
Attorneys

United States Patent Office

Joseph Antony Alfred Pinard, of San José, California

Device for Testing the Speed of Hounds

Specification Forming Part of Letters Patent No. 362,396, Dated May 3, 1887

Application Filed August 3, 1886. Serial No. 209,930. (No Model)

To all whom it may concern:

Be it known that I, Joseph Antony Alfred Pinard, a citizen of the United States, and a resident of San José, in the county of Santa Clara and State of California, have invented certain new and useful Improvements in Devices for Testing the Speed of Hounds; and I do hereby declare that the following is a full, clear, and exact description of the invention, which will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings, which form a part of this specification, and in which—

Figure 1 is a plan view or diagram showing my improved device for testing the speed of hounds. Fig. 2 is a perspective view of the device in operation, showing the imitation hare near the finish. Fig. 3 is a view of the hare and sled, the hare being shown in dotted line; and Fig. 4 is a vertical axial sectional view of the winding wheel.

Similar letters of reference indicate corresponding parts in all the figures.

My invention has relation to devices for testing the speed of hounds by dragging an imitation of an animal over the ground at considerable speed; and it consists in the improved construction and combination of a device for accomplishing this and of the mechanism for giving the motion of the animal a resemblance to the motion of a live animal, as hereinafter more fully described and claimed.

In the accompanying drawings, the letter A indicates a metallic plate of a sufficient width to form a support for the imitation animal without offering too much frictional resistance when dragged over the ground, and this plate

is provided with three uprights, B, C, and D, at the ends and middle of the plate.

A transverse rod, E, is secured at its middle to the central upright and is provided at its ends with curved rearwardly-projecting yielding runner-rods F F, which may serve for the purpose of steadying the base-plate when the latter is dragged over the ground. Oblique brace-rods G are secured at their ends to the end posts of the plate and to the transverse rod, forming a rhomboid frame.

A rearwardly-curved spring, H, is secured to the central upright, C, and passes into the forward portion of the body of the imitation animal, I, which is formed by halves, J and K, having their meeting ends L L rounded. A rod, M, connects these two halves together, as also the ends of two coiled springs, N N, secured loosely within cylindrical recesses O in the two halves of the body.

A rock-shaft, R, is journaled transversely across the head of the animal, to the ends of which shaft are secured the arms S S, which project up through the ears T T. Two other arms, Q Q, are also secured to this shaft and project down toward the front legs of the animal. A horizontal rod, P, is pivotally secured at its front end to the lower ends of the arms Q Q and at its rear end. The rear end of this rod is pivotally connected to a rod, U, the upper end of which is connected to the pivoted tail V of the animal, so that when the two halves of the body are moved, rocking against each other with their rounded ends, the ears and tail will be moved by the said rod and the arms.

The entire body of the animal is covered with skin, in imitation of the live animal, the skin covering all joints in the body.

A flexible rod, W, is attached to the forward end of the plate, and a cord, X, is attached to the forward end of this rod, winding upon a wheel or drum, Y, at the end of the track. This wheel is formed with a groove, Z, into which the cord may be wound, and the side of the wheel is provided with a bulge, A', projecting from the periphery of the wheel and having a side beveled toward the groove, so that in revolving the wheel and winding the cord upon the same the cord may be drawn up upon the bulge and again slipped off from the same into the groove, causing the plate and animal to jump once at each revolution of the wheel. The wheel may be revolved by any suitable means, and a fence,

B′, is built in front of the wheel, having an upwardly-swinging trap-door, C′, through which the cord passes, and which may be supported by means of a loose prop, D′, which may be tilted when the animal enters through the trap-door, allowing the said door to drop.

Pegs E′ are placed in a zigzag line upon the track at curves of the same and immediately in front of the fence, the pegs at the curves serving to guide the cord and at the same time to give the plate and animal a zigzag movement similar to the motion of a rabbit or hare, and at the end of the course, immediately before the fence, the pegs will stop the speed of the plate and animal, allowing it to pass under the trap-door without damage to itself or to the door.

It will thus be seen that the animal may be started immediately in front of a pack of hounds which will imagine that the animal is alive and will follow it, the motions of the dummy or imitation animal being sufficiently life-like to deceive the hounds, and the dummy may be dragged at any desired speed over the course, causing the hounds to follow and to run at their utmost speed, the device thus affording a convenient and sure means for testing the speed of hounds.

The guide runners at the sides of the frame will prevent the dummy from upsetting, and the dummy, being supported upon a spring and having the movable halves of its body connected by springs and having the pivoted ears and tail connected by the rod, the motion of the dummy when drawn over the course, and being drawn with sudden jerks when the cord passes over the bulge and slips, will be comparatively life-like, or, at any rate, sufficiently life-like to deceive the hounds, which will follow it in the same manner in which they would follow a live animal. The pegs, being planted in the ground, will also add to the life-like appearance of the animal, as they will give the course of the animal a zigzag motion found in the course of a chased hare or rabbit, besides serving to guide the cord around curves.

Having thus described my invention, I claim and desire to secure by Letters Patent of the United States—

1. A device for inducing hounds to run for speed-testing purposes, consisting of a runner or sled having a cord attached to it and means for swiftly winding the said cord, and a dummy animal supported by springs from the said

runner or sled, the body of said dummy being composed of two halves and adapted to move upon each other at their adjacent ends, as and for the purpose shown and set forth.

2. In a device for inducing hounds to run for speed-testing purposes, the combination of a suitable runner or sled having an upright at its middle, a forward half of a dummy-animal body having a rounded rear end and a cylindrical recess in the said end, a rearwardly-curved spring entering the forward end of the body-half and secured to the upright of the runner, a rear body-half having its forward end rounded and provided with a cylindrical recess, and springs coiled within the recesses and secured in them and having a rod connecting their meeting ends, as and for the purpose shown and set forth.

3. In a device for inducing hounds to run for speed-testing purposes, the combination of a suitable runner or sled having an upright, a dummy-body having a flexible joint at its middle and supported from the upright of the sled upon a spring, a transversely-journaled rock-shaft in the upper portion of the head of the animal and having downwardly-projecting arms and upwardly-projecting ears secured to it, a tail pivoted to the body and having a downwardly-projecting arm, and a rod pivotally secured to the downwardly-projecting arms of the ears and tail, as and for the purpose shown and set forth.

4. In a device for inducing hounds to run for speed-testing purposes, the combination of a plate or runner having uprights at its middle and at its ends and having a dummy animal supported from the middle upright, a transverse rod secured to the central upright and having flexible runners secured rearwardly projecting from its ends, and oblique brace-rods secured to the uprights at the ends of the runner and to the transverse rod, as and for the purpose shown and set forth.

5. In a device for inducing hounds to run for speed-testing purposes, the combination of a runner or sled having a spring-supported dummy-animal, a cord attached to the sled, pegs secured in zigzag line, substantially as described, and means for winding the cord, as and for the purpose shown and set forth.

6. In a device for inducing hounds to run for speed-testing purposes, the combination of a runner or sled having a dummy animal upon it and having a flexible rod secured to its forward end, pegs secured, substantially as described, in zigzag line, and a cord secured to the flexible rod, and means for winding the cord, as and for the purpose shown and set forth.

7. In a device for inducing hounds to run for speed-testing purposes, the combination of a runner or sled having a dummy animal upon it and provided with a cord attached to its forward end, a wheel or drum for winding the cord upon it, and a fence secured in front of the drum and provided with an upwardly-swinging trap-door supported by a movable prop, the cord passing through the door-opening, as and for the purpose shown and set forth.

8. In a device for inducing hounds to run for speed testing purposes, the combination of a runner or sled having a dummy animal upon it and having a cord attached to its forward end with a wheel having a peripheral groove for receiving the cord and provided in the periphery with a bulge beveled to one side, as and for the purpose shown and set forth.

In testimony that I claim the foregoing as my own I have hereunto affixed my signature in presence of two witnesses.

Joseph Antony Alfred Pinard.

Witnesses: Richard Healy, John Cooney.

DEFENDANTS' EXHIBIT "L"

WALSH PATENT NO. 611,876

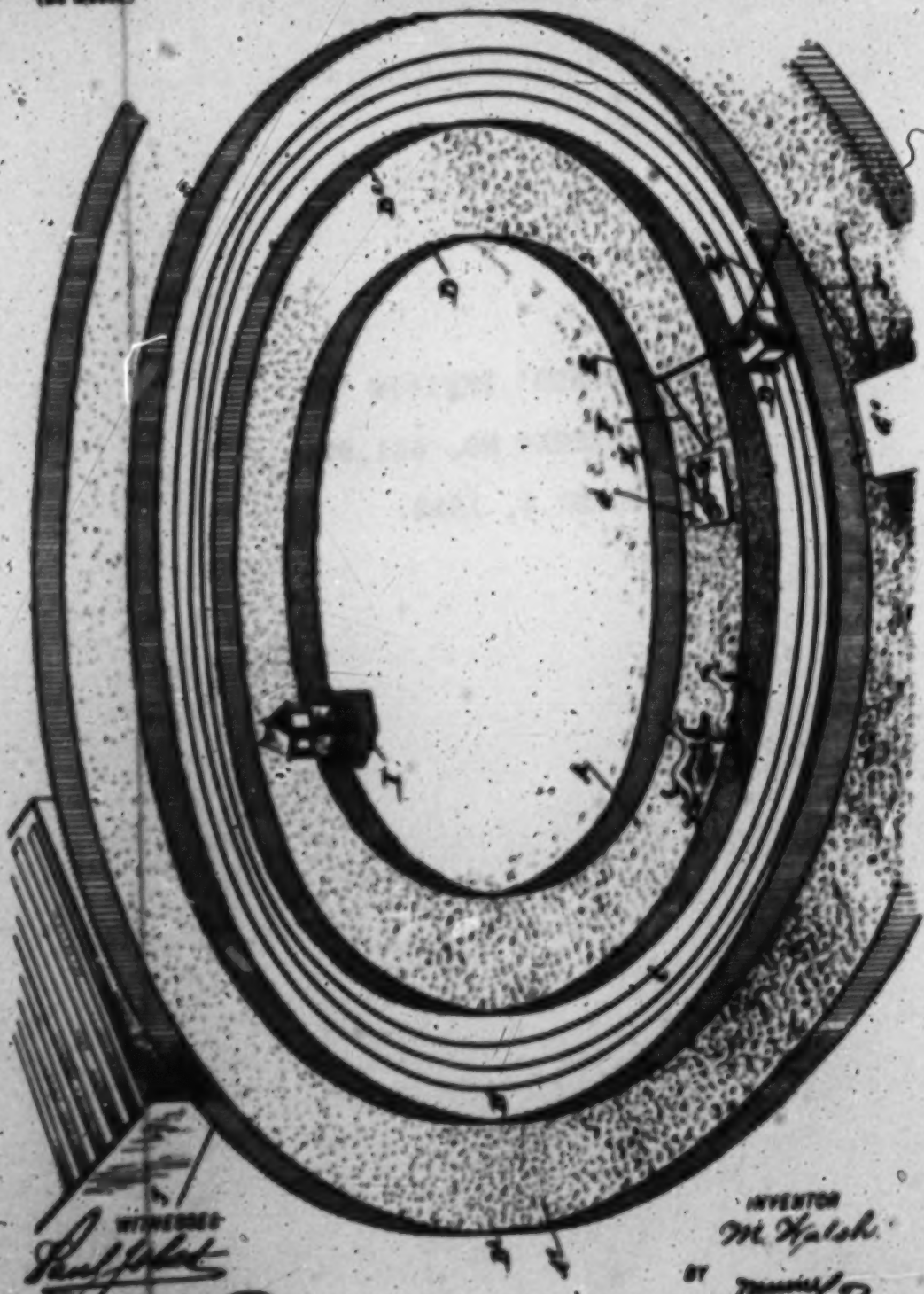
OCTOBER 4, 1898.

No. 611,876 Patented Oct. 4, 1898.

H. WALSH.

RACE TRACK FOR DOGS.

(No Model.)



WITNESSES:

INVENTOR
H. Walsh.
BY
ATTORNEYS.

United States Patent Office

Michael Walsh, of New York, N. Y.

Race-Track for Dogs

Specification Forming Part of Letters Patent No. 611,876, Dated October 4, 1898

Application Filed September 28, 1897. Serial No. 653,350. (No Model)

To all whom it may concern:

Be it known that I, Michael Walsh, of New York city, in the county and State of New York, have invented a new and Improved Race-Track for Dogs, of which the following is a full, clear, and exact description.

The object of the invention is to provide a new and improved race-track for testing the speed of dogs and other animals in such a manner that the animals during the run are completely unencumbered by harness, riders, or the like, so as to fully bring out the animals' speed qualities.

The invention consists of novel features, parts, and combinations of the same, as hereinafter more fully described, and pointed out in the claims.

Reference is to be had to the accompanying drawing, forming a part of this specification, in which the figure is a perspective view of the improvement.

In a field suitably selected for a race-course is formed one or more tracks A A', preferably arranged concentric to each other and of an oval, circular, or other form, with the tracks inclosed by suitable fences or railings B B' and B² B³, respectively, as plainly indicated in the drawing. Between the tracks A A'—that is, between the fences B' B²—is arranged a railway-track C for a motor D to travel on, the said railway-track being preferably provided with an underground-trolley system for delivering electricity to the apparatus in the motor D, so as to propel the latter at a desired speed around the track C.

From the motor D extend poles E E' in transverse directions over the fences B' B² and reach over into the tracks A A' a suitable distance above the ground thereof, and from the ends of the poles E E' extend downward and rearward

the ropes, rods, or poles F F', respectively, connected at their lower ends with supports G G', respectively, made of rubber, canvas, or other suitable material, preferably flexible, so as to readily conform to the undulations of the ground in the tracks A A' and the grass and other vegetable matter therein.

On each of the supports G is secured a dummy hare H or like object in plain view of the dogs or other animals following the support in the tracks, as indicated in the drawing. The race-course is also provided with the judge's stand I and a grand stand J for spectators sufficiently elevated to enable the persons seated therein to watch the running of the animals in the race-track.

As shown in the drawing, two tracks are employed; but it is evident that a race-course may be built with but one track, and it is also evident that other suitable mechanical means may be employed for pulling the support G rapidly along in the track for the animals to follow with the hare or dummy in plain view of the animals.

The motor D is arranged in such a manner that its speed is controlled from the judge's stand or other place to always have the support in advance of the following dogs.

Now in starting the race the dogs (preferably greyhounds) entered for testing their speed are held in the track at the starting-point with the support G and motor D somewhere in advance and moving, so that upon releasing the animals they follow the dummy carried on the support around the track to the starting-point, it being understood that geryhounds, for instance, follow the dummy by sight and not by scent.

Now it is evident that by the arrangement described the animals are completely unencumbered by harness, riders, or the like, and hence are free to follow at their utmost speed the fleeing object in front of them to fully bring out their speed qualities.

Having thus fully described my invention, I claim as new and desire to secure by Letters Patent—

1. A race-track for dogs, comprising a continuous track for the animals to run on, a support movable in the said track and adapted to support a dummy hare or other object in view of the animals following in the track, and mechanical means located outside of the track and connected with the said support to move the latter around in the track in

advance of the following animals, substantially as shown and described.

2. A race-track for dogs, comprising a track for the animals to run on, a support movable in the said track, and adapted to carry a dummy hare or other object, in view of the animals following on the track, and a motor mounted to travel, and connected with the said support, to move the latter around in the track in advance of the following animals, substantially as shown and described.

3. A race-track for dogs, comprising a track for the animals to run on, a railroad-track adjacent to but separated from the said race-track, a motor mounted to travel on the said railroad-track, and a support carried by the said motor, and arranged to be dragged along in the said race-track, substantially as shown and described.

4. A race-track for dogs, comprising a track for the animals to run on, a railroad-track adjacent to but separated from the said race-track, a motor mounted to travel on the said railroad-track, and a support carried by the said motor, and arranged to be dragged along in the said race-track, the said support being of a flexible material, and adapted to carry a dummy hare or other object, substantially as shown and described.

5. A race-track for dogs, comprising a track for the animals to run on, a flexible support adapted to be dragged in the said track, a motor mounted to travel adjacent to the track, a pole carried by the said motor, and a connection between the said pole and the said support, substantially as shown and described.

Michael Walsh.

Witnesses: Theo. G. Hoster, Jno. M. Ritter.

DEFENDANT'S EXHIBIT "M"

Moss Patent No. 9058, July 4, 1896

No. 9058, A. D. 1896

Date of Application, 29th Apr., 1896. Accepted, 4th July, 1896

Complete Specification

Improvements in and Relating to Coursing or Like Sport

I, Stephen Ellis Moss, of Cleburne, Johnson County, State of Texas, United States of America, Gentleman, do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:

My invention has relation to improvements in race courses or race tracks and consists in the novel arrangement and combination of parts to be more fully hereinafter described and pointed out in the claims.

In the drawings:

Fig. 1 is a plan diagrammatic view of a race track provided with my improvements;

Fig. 2 is a detail transverse section on the line *x—x* of Fig. 1, taken through the body of the "dummy" animal propelled along the track; and

Fig. 3 is an elevation in detail of the gate swung in the path of the track for the interception of the live animal giving chase to the dummy.

The object of my invention is to construct a race course in which dummies or artificial animals may be substituted for the natural ones, a particular object being to substitute a dummy jack rabbit for the live rabbit on a course or race where such rabbit is pursued or chased by hounds or other dogs; and as such a rabbit under my present invention is given a speed of travel greater than that which the dogs can ever attain, provision is made to intercept or cut off the dogs at the proper moment, permitting them to enter their kennels before they become too much exhausted in attempting to catch the dummy. It is a well known fact that a jack rabbit is a very tender animal and more or less

stupid; and as its eyes naturally bulge out from their sockets, these organs are apt to become injured should the rabbit inadvertently or in the heat of the race run against the wall or fence enclosing the race or track. To avoid these dangers and yet preserve the natural features of the sport, I substitute for the live rabbit, a dummy or stuffed rabbit, and provide suitable mechanism for impelling such dummy along the race course. The preferred form of mechanism to accomplish these results is an electric propelling device of the order of that employed in the propulsion of electric cars, viz., an electric trolley system. In detail the improved track may be described as follows:

Referring to the drawings, 1 represents a race course or track of approximately a threequarter mile stretch, 2 the center field thereof, and 3 and 4 respectively the inner and outer walls and fences between which the course or track is confined, the track being wide enough to admit of several hounds or other species of dog. 5 represents the grand stand, and 6 the judges' stand located within the center field. Leading from the wall 3 to one side of the judge's stand and approximately opposite one end of the grand stand, is a chute 7 leading to a kennel 8 for the dogs. The opening to the chute is controlled by a swinging gate or door 9 hinged at the entrance to the chute, the gate being adapted to be operated from the judges' stand by a controlling lever 10 pivoted at its base, and connected by a link 11 to an arm 12 carried at one end of the hinge rod 13 of the gate. By manipulating the controlling lever 10 in one direction or the other, the gate may be swung to either close or open the entrance to the chute from the race track, at the will of the operator. The door 9 is adapted when swung open to close against the free edge of a wall or fence 14 projecting at an inclined angle from the wall 4, the object of closing the gate against such wall 4 being to intercept the dogs and cause them to enter the chute 7 and enter the kennel 8, before the dogs come into actual contact with the dummy rabbit and discover its artificial nature, and before the dogs become too much fatigued in attempting to catch the dummy.

The track or rail on which the artificial rabbit 15 is impelled, is preferably in the form of a rail 16 disposed approximately medially between the walls 3 and 4, but also adapted to take a sinuous or wave course as seen in the dia-

grammatic view in Fig. 1, so that the dummy may imitate as closely as possible the course of the natural animal. The electric motor 17 forms part of or is carried by the dummy animal or rabbit, the shaft 18 of the motor carrying a terminal pinion 19 meshing with a gear-wheel 20 secured to or forming part of the travelling and supporting wheel 21 which has a peripheral groove embracing the rail. The current is led from the motor to the wheel 21 through the wire 31 when it is grounded through the rail 16, the current first entering the motor through the trolley wire 22, trolley wheel 23, and connecting wire 24, the trolley wire receiving its current from the shunt wire 25 leading from any suitable central station. The grand stand is provided with a switch mechanism 26 by the turning of the lever 27 of which to different degrees or notches, the intensity of the current propelling the rabbit can be varied, thus varying the speed of the rabbit. The race is made the more interesting in that the speed of the dummy rabbit can be increased to such a degree that the dogs will never overtake the dummy; and to avoid any danger of the dogs coming in contact with or overtaking the dummy, they are cut off by the swinging gate at the proper moment and made to enter the kennel located in the center field.

To avoid any danger of the dogs coming in contact with the live trolley wire, I cover the full length of the wire with a hood 28 of wood or other non-conducting material, the same being provided with suitable openings to allow for the fastening to the wire of the lower ends of the vertical members 29 depending from the guy rods 30 stretched at intervals between the walls 3 and 4 of the race course.

Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is,

1. In a race course, a suitable track or race for the entry of live racing animals, and means forming a part of or disposed along said race for guiding and impelling artificial or dummy animals in advance of the living animals giving chase, substantially as set forth.

2. In a race course a suitable track or race for the entry of live race animals, means forming a part of or disposed along said race for guiding and impelling artificial or dummy animals in advance of the living animals giving

chase, and suitable means for intercepting the live animals before the same overtake the dummies, or before they become too exhausted, substantially as set forth.

3. In a race course, a suitable track or race for the entry of live race animals, means forming a part of or disposed along said race for guiding and impelling artificial or dummy animals in advance of the living animals giving chase and at variable speeds, and suitable means for intercepting the live animals before the same overtake the dummies, substantially as set forth.

4. A race course comprising a suitable course or race, bounding walls for the same, a center field enclosed by the track, a chute leading from the race to the center field, a kennel at the further end of the chute, a wall projecting from the outer wall of the race a suitable distance across the width of the race, a gate hinged to the opposite wall and adapted to be swung alternately to either close the mouth of the chute or open the latter by closing against the free edge of the projecting wall and thus intercepting the animals giving chase and obliging them to enter the kennel, a suitable rail or track forming a part of the race and adapted to guide a dummy animal, and suitable means for impelling the dummy on the rail in advance of the live animals giving chase, substantially as set forth.

Dated this 29th day of April 1896.

F. Wise Howorth, 46, Lincoln's Inn Fields, London, W. C., Agent for the Applicant.

London: Printed for Her Majesty's Stationery Office, by Darling & Son, Ltd.—1896

[This Drawing is a reproduction of the Original on a reduced scale.]

A.D. 1898 April 29. N° 9058
MOSS' COMPLETE SPECIFICATION
(1 SHEET)

Fig 1.

Fig 2.

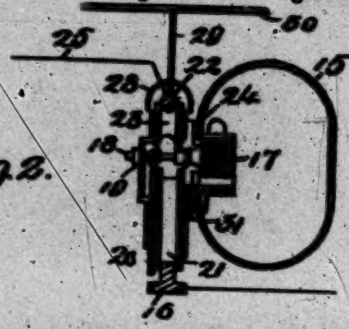
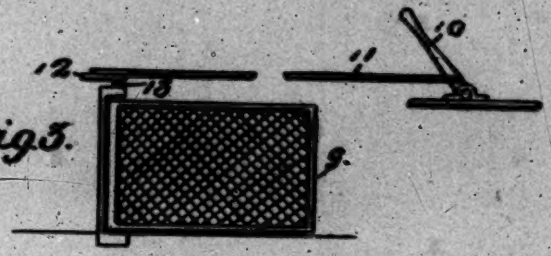
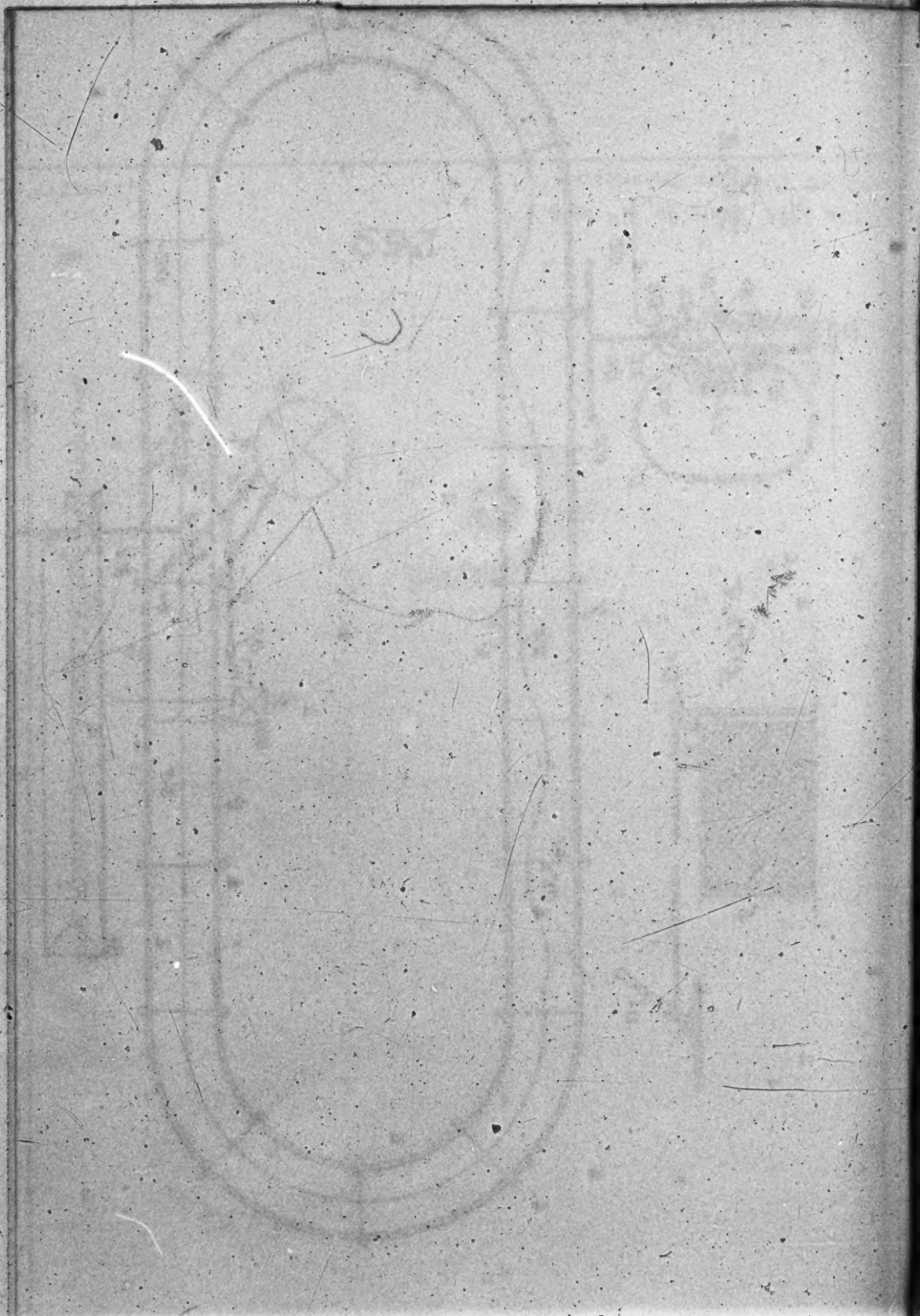


Fig 3.





DEFENDANTS'S EXHIBIT "N"

EVERETT PATENT NO. 1,052,807

FENRUARY 11, 1913.

P. EVERETT.

RACE TRACK.

APPLICATION FILED MAY 6, 1912.

1,052,807.

Patented Feb. 11, 1913

2 SHEETS-SHEET 1.

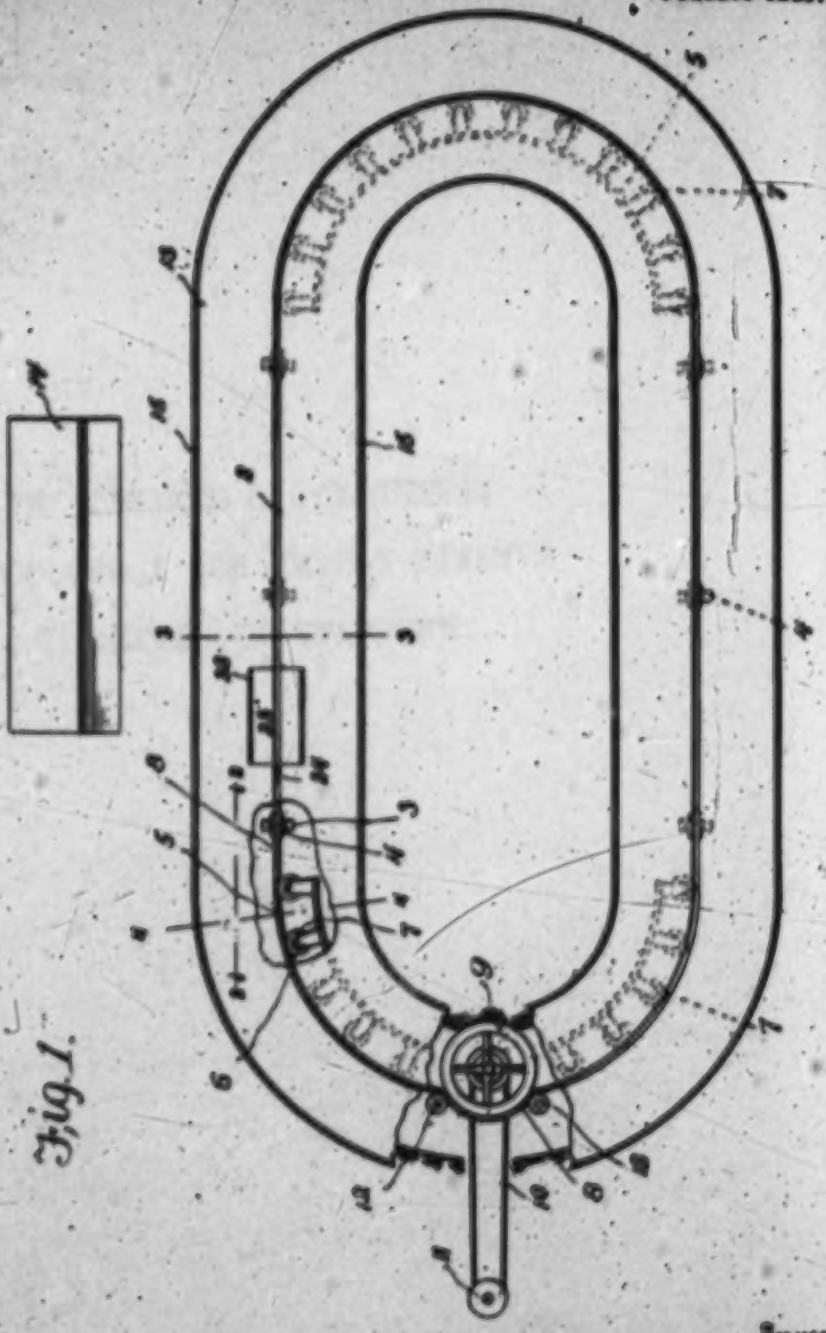


Fig. 1.

Witnesses

W. Hunt Smith

E. Kennedy Jr.

Inventor

Percy Everett.

By Victor J. Evans

Attorney

P. EVERETT.

RACE TRACK.

APPLICATION FILED MAY 9, 1912.

1,052,807.

Patented Feb. 11, 1913.

2 SHEETS-SHEET 2.

Fig. 3.

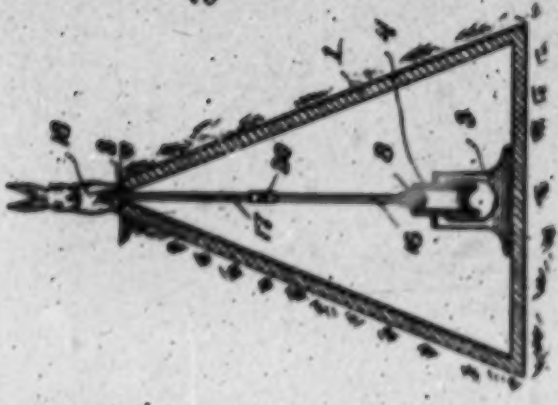


Fig. 4.

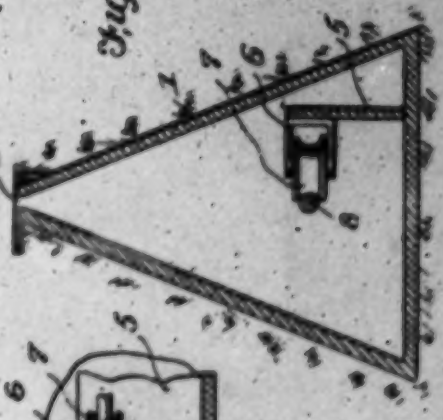


Fig. 2.

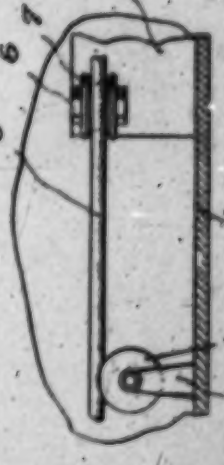
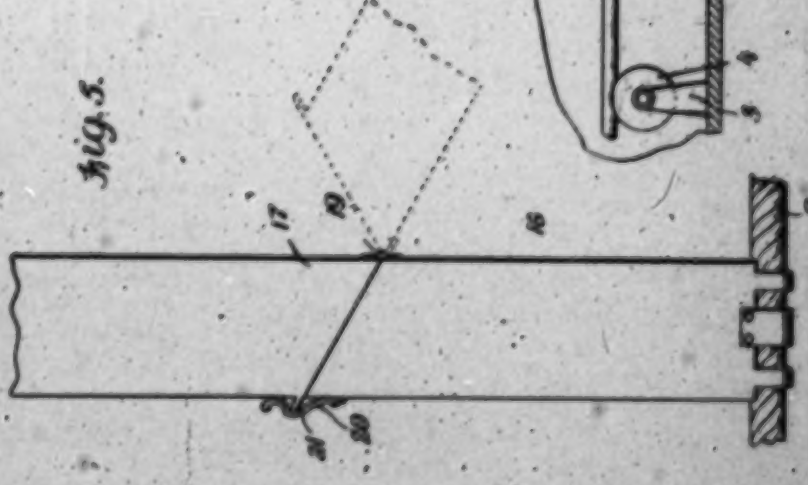


Fig. 5.



Witnesses

William L. Smith

E. C. Stevenson Jr.

Inventor

Percy Everett.

By Victor J. Evans

Attorney

United States Patent Office

Percy Everett, of San Antonio, Texas

Race-Track

1,052,807. Specification of Letters Patent. Patented Feb. 11, 1913

Application filed May 8, 1912. Serial No. 695,974

To all whom it may concern:

Be it known that I, Percy Everett, a citizen of the United States, residing at San Antonio, in the county of Bexar and State of Texas, have invented new and useful Improvements in Race-Tracks, of which the following is a specification.

This invention relates to race tracks and the object of the invention is to provide a simple and efficient device whereby dogs may be trained to run rabbits, foxes, or the like.

A further object of the invention is to provide a device of this character wherein the artificial animal used is caused to disappear beneath the track at a predetermined time so as to prevent the same from being torn to pieces by the dogs.

Further objects of this invention will appear as the following specific description is read in connection with the accompanying drawing, which forms a part of this application, and in which:

Figure 1 is a top plan view with parts broken away. Fig. 2 is a vertical section taken on the line 2—2 of Fig. 1. Fig. 3 is a transverse section on the line 3—3 of Fig. 1. Fig. 4 is a similar section on the line 4—4 of Fig. 1. Fig. 5 is a detail vertical section showing the supporting stem, in operative position in full lines and in inoperative position in dotted lines.

Referring more particularly to the drawing, 1 represents an annular casing which is preferably substantially V-shaped in cross section with its side members coming closely adjacent each other at the top to produce a slot 2. This casing is embedded in the ground with the upper

ends of the sides flush with the surface thereof and carries upon its base within the casing and in vertical alinement with the slot, suitable bearing supports 3 in which are journaled grooved idlers 4. Also secured to the base are mounting plates 5 having bearing ears 6 secured thereto in which are journaled the pulleys 7. Passing around over the pulleys 4 and 7 is a cable 8 which also passes over a power pulley 9 driven through a belted connection 10 with a suitable drum 11 preferably rotated by a motor, not shown. Suitable idlers 12 hold the cable in engagement with the power wheel, as shown in Fig. 1. The track 13 may be treated in any suitable manner and preferably a grand stand is arranged along side the track, as indicated at 14, the track being defined by fences 15.

Secured to the cable and passing through the slot 2 is a mounting stem which is constructed in two parts 16 and 17 and upon the upper part is mounted an animal 18, here shown as the representation of a rabbit. The two parts of the stem 16 and 17 are hinged together, as shown at 19, and are held in upright position by means of the spring catch 20 carried by the part 16 and engaged with a lug 21 on the part 17.

At a certain predetermined point in the track, a well casing is connected to the casing 1 and is indicated at 22. Hinged to this casing are separate doors 23 which are operated in any suitable manner and bridging the slot 2 adjacent the well opening is a bolt 24 which, when engaged by the upper portion of the stem, will break the same, as shown in dotted lines in Fig. 5, and cause the rabbit or other animal to be projected into the well casing, as will be readily understood. Many ways may be devised for opening and closing the doors. None have been shown herein as this forms no part of the invention.

In the operation of the device, the imitation animal is set upon the stem with the same in upright position, the motor started, and the dogs turned loose from a suitable starting point. When the imitation animal reaches a predetermined point, the doors are opened preferably by a suitable lever mechanism, and when the same strikes the bolt, the animal is caused to disappear into the well casing 22, as will be readily understood, without stopping the operation of the cable. The casing is in effect a tunnel beneath the ground in which the imitation animal is adapted

to travel after the section 17 has been depressed through the doors by coming into contact with the bolt.

What is claimed is:

1. In a device of the class described, an underground endless cable, means for driving the cable, a supporting member traveling with the cable and projecting above the ground, and means to lower the supporting member below the surface of the ground.

2. In a race track, an underground endless cable, means for driving the cable, a two-part supporting member carried by and traveling with the cable, said supporting member projecting above the ground, and means to lower the upper portion of the supporting member below the surface of the ground.

3. In a race track, an endless underground cable, means for driving the cable, a two-part supporting member carried by the cable, and projecting above the ground, a hinge for connecting the parts of the supporting member, means for holding the parts of the supporting member in alinement with the upper portion projected above the ground, and an abutment lying in the path of the upper portion.

4. In a device of the class described, an underground endless cable, means for driving the same, a two-part supporting member having its parts hinged together and the upper part projecting above the ground, a resilient catch for holding the parts in alinement, and means for breaking the catch and for lowering the upper part below the surface of the ground.

5. In combination, a tunnel having a slot in the same, an endless cable traveling in the tunnel, a supporting member secured to the cable and passing through the slot, and an abutment arranged across the slot for lowering the supporting member into the tunnel.

6. In combination, an annular tunnel having a slot, an endless cable mounted therein, means to drive the cable, and a two-part supporting member connected to the cable and having a part projecting through the slot, a hinge for connecting the parts of the supporting member together, a spring cap for holding the parts of the supporting member in alinement, and an abutment arranged across the

slot and adapted to engage the upper portion of the supporting member for breaking the spring catch for lowering the upper part of the supporting member into the tunnel.

In testimony whereof I affix my signature in presence of two witnesses.

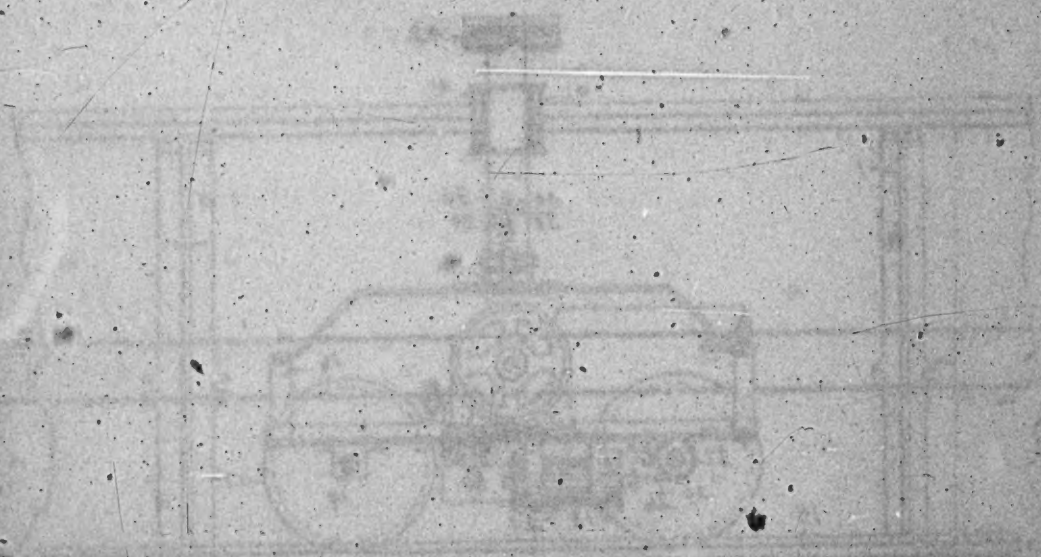
Percy Everett.

Witnesses: A. F. Walsh, H. A. Loeffler.

DEFENDANTS' EXHIBIT "O"

SMITH PATENT NO. 1,038,504

SEPTEMBER 10, 1912



O. P. SMITH.

LURE CONVEYER.

APPLICATION FILED FEB. 26, 1912.

1,038,504.

Patented Sept. 10, 1912.

2 SHEETS—SHEET 1.

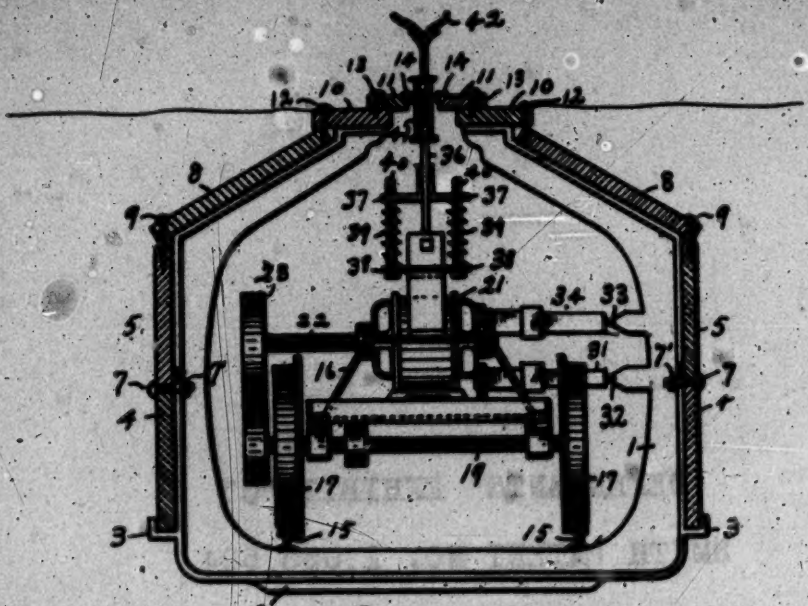


Fig. 1.

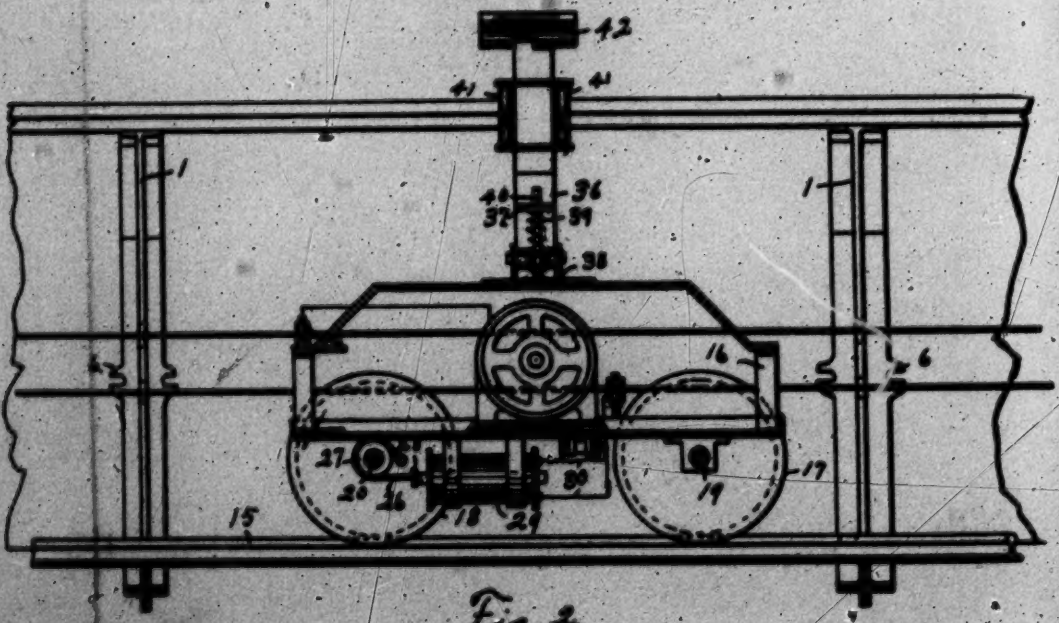


Fig. 2.

WITNESSES:

Mary Montgomery

E. Frankland

INVENTOR

Owen P. Smith

BY

Harding & Cathey

ATTORNEYS

O. P. SMITH.

LURE CONVEYER.

APPLICATION FILED FEB. 26, 1912.

1,038,504.

Patented Sept. 10, 1912.

2 SHEETS—SHEET 1.

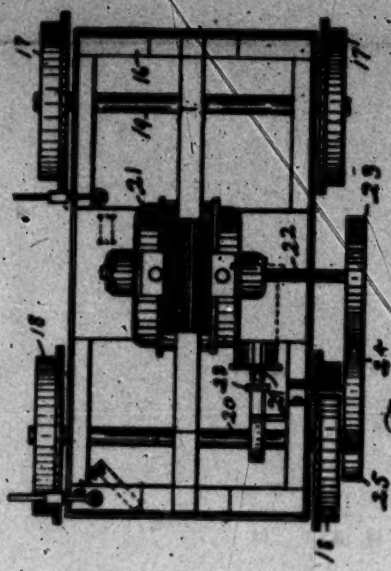


Fig. 3.

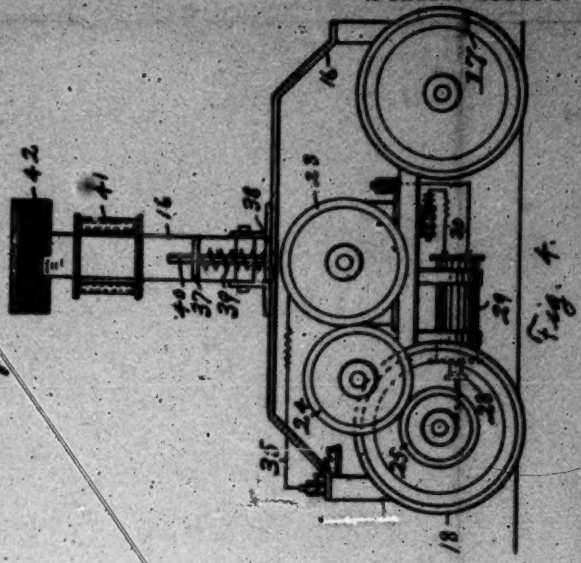


Fig. 4.

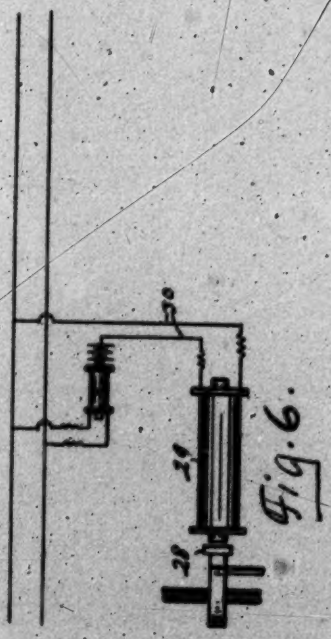


Fig. 6.

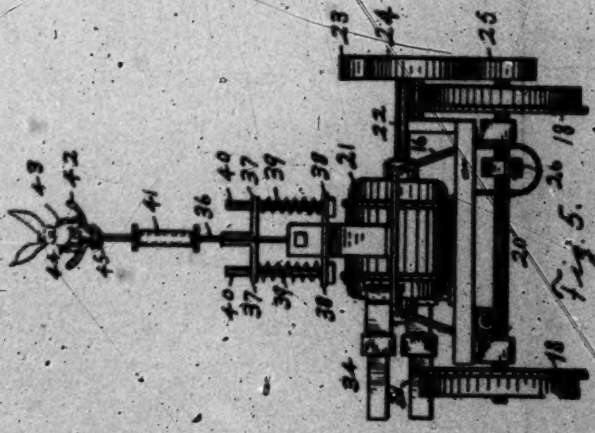


Fig. 5.

WITNESSES

Mary Montgomery

E. Fruehbeck

INVENTOR

Owen P. Smith

BY

Hanburg Colby

ATTORNEYS

United States Patent Office

Owen P. Smith, of Houston, Texas

Lure-Conveyer

1,038,504. Specification of Letters Patent. Patented Sept. 10, 1912

Application filed February 26, 1912. Serial No. 680,057

To all whom it may concern:

Be it known that I, Owen P. Smith, a citizen of the United States, residing at Houston, in the county of Harris and State of Texas, have invented certain new and useful Improvements in Lure-Conveyers, of which the following is a specification.

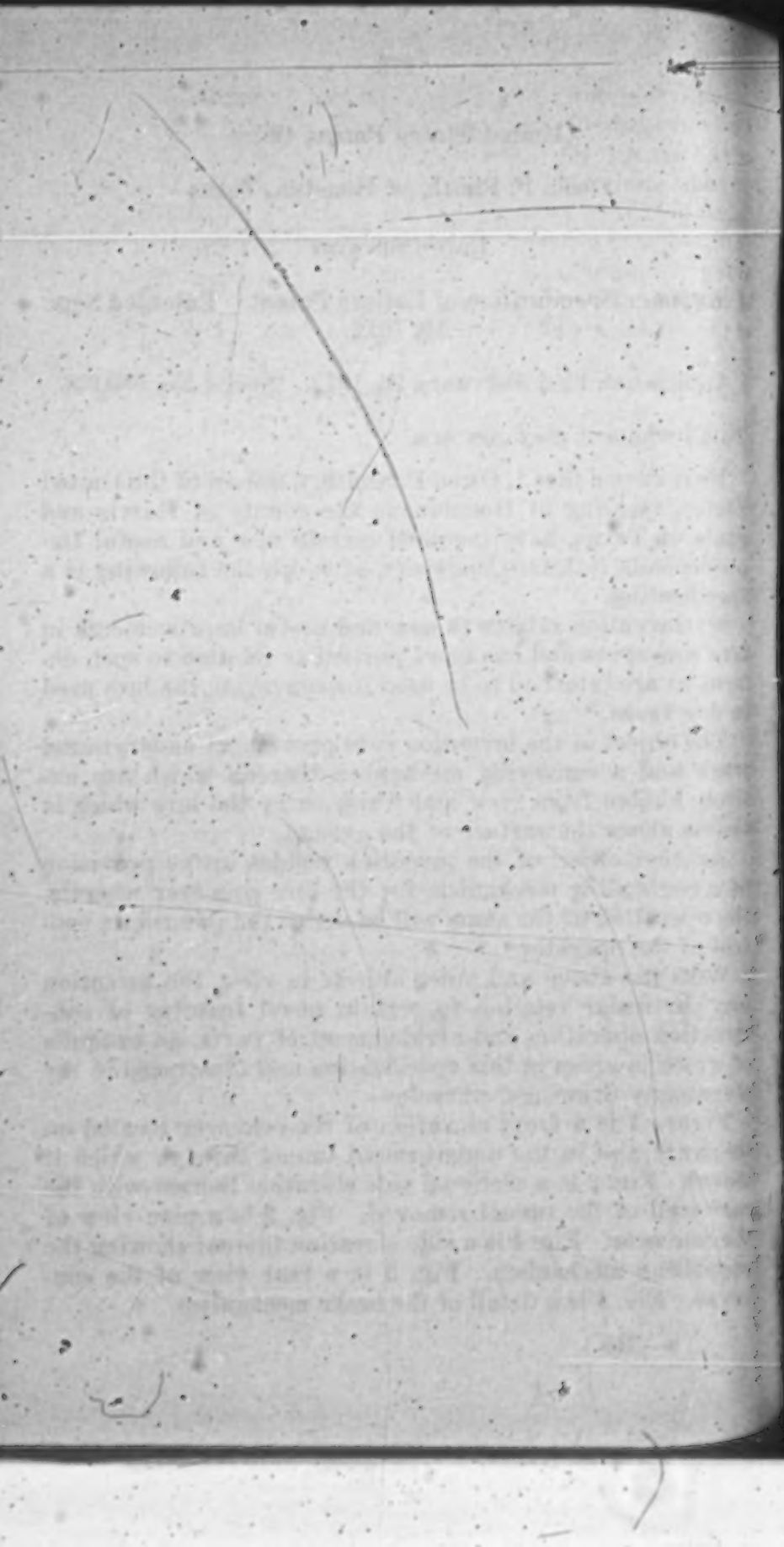
My invention relates to new and useful improvements in lure conveyers and has more particular relation to such devices as are intended to be used for conveying the lure used in dog races.

The object of the invention is to provide an underground track and a conveying mechanism thereon which are entirely hidden from view and which carry the lure which is visible above the surface of the ground.

Another object of the invention resides in the provision of a controlling mechanism for the lure conveyer whereby the operation of the same will be under the immediate control of the operator.

With the above and other objects in view, the invention has particular relation to certain novel features of construction operation and arrangement of parts, an example of which is given in this specification and illustrated in the accompany drawings, wherein—

Figure 1 is a front elevation of the conveyer located on the track and in the underground tunnel through which it moves. Fig. 2 is a sectional side elevation thereof with the rear wall of the tunnel removed. Fig. 3 is a plan view of the conveyer. Fig. 4 is a side elevation thereof showing the propelling mechanism. Fig. 5 is a rear view of the conveyer. Fig. 6 is a detail of the brake mechanism.



Referring now more particularly to the drawings wherein like numerals of reference designate similar parts in each of the figures, the numeral 1 refers to a girder of cast metal or some similar durable material which in plan presents the contour of a cross section of the tunnel of which it forms a part. These girders are placed a uniform distance apart along the tunnel and rest on ties 2 and form the frame work of the tunnel structure. Extending laterally from each side of the girder are the supporting hooks 3 which are designed to receive the lower edge of the side boards 4 whose upper edges support similar side boards 5, said boards 4 and 5 extending lengthwise of the tunnel and forming the sides thereof. Alined with the joint between the boards 4 and 5 on each side of the girders are laterally projecting fingers 6, and a suitable bolt 7 passes through the joint and its head engages against the adjacent edges of the board 4 and 5; said bolt extending through between the fingers 6 and being secured in place by means of the nut 7'. The sides of the girder stand at right angles to the bottom thereof up to near the surface of the ground and then converge inwardly toward each other but the free ends do not quite meet, thus forming a top which slopes downwardly in opposite directions and on each side of the tunnel and resting upon the sloping top-portion of the girders are the lengthwise extending boards 8, whose lower edges are secured to the boards 5 by means of the spikes 9, thus forming a roof-like covering for the tunnel, the comb of which is completed by means of the boards 10 and 11, the former of which are spiked to the boards 8 by means of spikes 12 and the latter of which are adjustably secured to the former by means of set-screws 13.

It will be observed that the sides and top of the tunnel are thus formed of longitudinally extending timbers forming a tunnel with a sloping roof and having the roof members arranged in pairs on each side but the extreme top members 11 do not quite meet, thus forming a longitudinal passage-way along the top of the tunnel for a purpose to be hereinafter set forth. The top members 11 are flush with the surface of the ground and their inner edges are lined with plates 14 to protect the same against wear. Within the tunnel is the conveyer proper which runs upon the rails 15 forming the track. The conveyer consist- of frame work 16 mounted upon front and rear carrier wheels 17 and 18

rigidly mounted upon their respective axles 19 and 20. This conveyer carries the motor 21 whose drive shaft 22 carries a rigidly mounted gear wheel 23 which meshes with the gear wheel 24 which in turn meshes with a gear wheel 25 rigidly mounted upon axle 20 and through this gear mechanism motion may be imparted from the motor to the carrier wheels of the conveyer.

The numeral 26 refers to a band brake, one end of which is secured to the frame work of the conveyer. This brake surrounds a disk 27 rigidly mounted upon the shaft 20 and its free end has a magnet 28 alined with a magnet 29 suspended from the conveyer frame and charged through wires 30. When the magnet 29 is charged it operates through its attraction for the magnet 28 to set the brake on the disk 27 and when the electricity is cut off from the wires 30 the brake 26 is released. The wires 30 communicate with a brush 31 which in turn contacts with a feed wire 32 which extends entirely along the wall of the tunnel. A similar feed wire 33 extends along the wall of the tunnel and is arranged to contact with a brush 34 which in turn conducts electricity to the motor through the wires 35.

The wires 32 and 33 are connected to a main feed wire (not shown) by switch mechanism such that when the current is connected with one wire it will be disconnected from the other with the end in view that when the motor is started the brake will be released and vice versa.

Extending upwardly from the central portion of the frame 16 is a support 36 which has a hinge near the bottom thereof so as to permit the top of the support to move laterally in each direction and secured to the movable and stationary parts of this support above and below the hinge and extending laterally therefrom are the respective arms 37 and 38, interposed between the free ends of which are strong coil springs 39 surrounding the stays 40 which are secured to the arms 37 and have a slidable engagement with the arms 38. This construction operates to normally hold the support 36 in vertical position, but at the same time permits the lateral movement thereof. This support extends up through the passageway along the top of the tunnel and moves along as the conveyer moves and is provided with the roller bearings 41 in the front and rear thereof which minimize the friction against the plates 14. The top of the support 36 is divided forming a Y in which an oblong plat-

form 42 rests. This platform is provided to receive an artificial animal 43 which has a metallic plate 44 secured to its body and a set screw 45 passes through one arm of the Y carried by the top of the support 36 and also the platform 42 and is tapped into the plate 44 and secures the platform and lure in place.

The tunnel is usually constructed in the shape of a circle or ellipse so as to obviate any short angles or turns and thus minimize the friction of the support 36 against the sides of the passageway through which it extends.

This device is intended to be used for races and is provided for the purpose of substituting an inanimate lure for a live animal, thus retaining all of the exciting and advantageous features of the sport but eliminating the inhuman features connected with the use of a live animal for the race.

What I claim is:

1. A device of the character described composed of a track and a tunnel inclosing the same, a conveyer arranged to move on said track, a motive mechanism for said conveyer, a flexible support carried by the conveyer and projecting through a lengthwise passageway along the upper side of the tunnel, rotatable bearings carried by the support and operating against the sides of said passageway and a lure mounted upon the upper end of said support and moving lengthwise of the tunnel and above the same.

2. A device of the character described composed of a tunnel and a track in the bottom thereof, a conveyer arranged to move on said track, a motive mechanism for said conveyer, a suitable brake mechanism provided therefor for the purpose of regulating the movement thereof, a support yieldably secured to the conveyer and having lateral movement relative thereto and projecting through a lengthwise passageway along the upper side of the tunnel anti-friction members carried by the support and operating against the sides of the passageway and a lure mounted upon the upper end of said support.

3. A device of the character described, composed of a tunnel having a lengthwise passageway along the upper side thereof, a track in the bottom of said tunnel, a conveyer arranged to move on said track, a motive mechanism

for said conveyer, a suitable brake mechanism provided for the purpose of regulating the movement thereof, a support yieldably secured to the conveyer and having lateral movement relative thereto and projecting through the lengthwise pas-ageway of the tunnel, suitable bearing members carried by said support and operating against the sides of the passageway, a platform carried by the upper end of said support and a lure secured to said platform.

4. In a device of the character described, a conveyer comprising a frame work and carrier wheels, upon which the frame work is mounted, a motive mechanism operatively connected with the carrier wheels, a yieldable support upstanding from the frame work, laterally extending arms on each side of said support and resilient members interposed between the free ends of said arms, a platform carried by the upper ends of said support and a lure secured on said platform.

5. A device of the character described, including a tunnel and a track located therein, a conveyer arranged to move on said track, a motive mechanism for said conveyer, a support hinged to the conveyer and laterally movable relative thereto and projecting through a lengthwise passageway along the upper side of the tunnel and a lure mounted upon said support.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

Owen P. Smith.

Witnesses: A. C. Green, May Montgomery.

DEFENDANT'S EXHIBIT P.

390

DEPARTMENT OF COMMERCE.
United States Patent Office

To all persons to whom these presents shall come Greeting:

This is to Certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the

Letters Patent of
Owen P. Smith,

Number 1,038,504, Granted September 10, 1912,

for

Improvement in Lure-Conveyers.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this seventeenth day of February in the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States of America the one hundred and fifty-first.

(Seal)
Attest:
D. E. Wilson,
Chief of Division.

Thomas E. Robertson,
Commissioner of Patents.

Defendant's Exhibit P

(11) 230

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Div. ~~47~~ 34 1912 (Ex'r's Book) ~~45~~ ~~19~~

Number (Series of 1900), ~~330~~ ~~40~~

~~502~~

680057 Patent No. 1038504

Name Owen P. Smith,
of Houston,
County of
State of Texas,
Invention Lure Conveyors.

DIVISION OF APP., No. ——— FILED ———, 19—

Parts of Application Filed	Original	Renewed
Petition	February 26, 1912	....., 191
Affidavit	" ", 1912	....., 191
Specification	" ", 1912	....., 191
Drawing 2 Shts	" ", 1912	....., 191
Model or Specimen	, 191	....., 191
	Feby. 26, 1912	
First Fee Cash $15		....., 191
" " Cert	, 191	....., 191
Appl. filed complete	Feb. 26, 1912	....., 191
Examined G. R. Simpson,	July 4th 12	....., 191
Allowed	W. W. Mortimer For Commissioner.	For Commissioner.
Notice of Allowance	July 27, 1912	....., 191
Final Fee Cash	$20 Aug. 12, 1912	....., 191
" " Cert.	, 191	....., 191

Patented September 10, 1912

Attorney Hardway & Cathey, Houston, Texas

Associate Attorney

Lumberman's Bank Bldg.

(No. of Claims Allowed 5.) Title as Allowed Lure Conveyor.

(Class 104-111.)

$15 Received
Feb 26 1912
Chief Clerk U. S. Patent Office

Serial 680,057 Paper No. 1
Appln.

Defendant's Exhibit P

PETITION

To the Commissioner of Patents:

Your petitioner Owen P. Smith a Citizen of the United States, resident of Houston in the County of Harris, and State of Texas whose Post-Office address is 809 Fannin St. Houston, Harris County, Texas, prays that Letters Patent may be granted to him for the improvement in Lure Conveyors, as set forth in the annexed specification.

And I hereby appoint Hardway & Cathey, of Houston, Texas, a firm composed of Edward V. Hardway, and Wm. A. Cathey, my Attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to sign my name to the drawings, to receive the Patent, and to transact all business in the Patent Office connected therewith.

Signed at Houston, in the County of Harris and State of Texas, this 2d day of December 1911.

If inventor signs by mark,
same must be attested by two
subscribing witnesses.
Inventor's Full name here: Owen P. Smith.

SPECIFICATION

To All Whom It May Concern:

Be it known that I, Owen P. Smith, a citizen of the United States, residing at Houston, in the county of Harris and State Texas, have invented certain new and useful Improvements in Lure-Conveyers, of which the following is a specification.

My invention relates to new and useful improvements in lure conveyers and has more particular relation to such devices as are intended to be used for conveying the lure used in dog races.

The object of the invention is to provide an under ground track and a conveying mechanism thereon which are entirely hidden from view and which carry the lure which is visible above the surface of the ground.

Another object of the invention resides in the provision of a controlling mechanism for the lure conveyer whereby the operation of the same will be under the immediate control of the operator.

With the above and other objects in view, the in-

vention has particular relation to certain novel features of construction operation and arrangement of parts, an example of which is given in this specification and illustrated in the accompanying drawings, wherein—

Figure 1 is a front elevation of the conveyer located on the track and in the under ground tunnel through which it moves.

Figure 2 is a sectional side elevation thereof with the rear wall of the tunnel removed.

Figure. 3 is a plan view of the conveyer.

Figure. 4 is a side elevation thereof showing the propelling mechanism.

Figure. 5 is a rear view of the conveyer.

Figure. 6 is a detail of the brake mechanism.

Referring now more particularly to the drawings wherein like numerals of reference designate similar parts in each of the figures, the numeral 1 refers to a girder of cast metal or some similar durable material which in plan presents the contour of a cross section of the tunnel of which it forms a part. These girders are placed a uniform distance apart along the tunnel and rest on ties 2 and form the frame work of the tunnel structure. Extending laterally from each side of the girder are the supporting hooks 3 which are designed to receive the lower edge of the side boards 4 whose upper edges support similar side boards 5, said boards 4 and 5 extending lengthwise of the tunnel and forming the sides thereof. Aligned with the joint between the boards 4 and 5 on each side of the girders are laterally projecting fingers 6, and a suitable bolt 7 passes through the joint and its head engages against the adjacent edges of the boards 4 and 5; said bolt extending through between the fingers 6 and being secured in place by means of the nut 7'. The sides of the girder stand at rightangles to the bottom thereof up to near the surface of the ground and then converge inwardly toward each other but the free ends do not quite meet, thus forming a top which slopes downwardly in opposite directions and on each side of the tunnel and resting upon the sloping top portion of the girders are the lengthwise extending boards 8, whose lower edges are secured to the boards 5 by means of the spikes 9, thus forming a roof-like covering for the tunnel, the comb of which is completed by means of the boards 10 and 11, the former of which are spiked to the boards 8 by means of spikes 12 and

the latter of which are adjustably secured to the former by means of set-screws 13.

It will be observed that the sides and top of the tunnel are thus formed of longitudinally extending timbers forming a tunnel with a sloping roof and having the roof members arranged in pairs on each side but the extreme top members 11 do not quite meet, thus forming a longitudinal passageway along the top of the tunnel for a purpose to be hereinafter set forth. The top members 11 are flush with the surface of the ground and their inner edges are lined with plates 14 to protect the same against wear. Within the tunnel is the conveyer proper which runs upon the rails 15 forming the track. The conveyer consist of frame work 16 mounted upon front and rear carrier wheels 17 and 18 rigidly mounted upon their respective axles 19 and 20. This conveyer carries the motor 21 whose drive shaft 22 carries a rigidly mounted gear wheel 23 which meshes with the gear wheel 24 which in turn meshes with a gear wheel 25 rigidly mounted upon axle 20 and through this gear mechanism motion may be imparted from the motor to the carrier wheels of the conveyor.

The numeral 26 refers to a band brake, one end of which is secured to the frame work of the conveyor. This brake surrounds a disc 27 rigidly mounted upon the shaft 20 and its free end has a magnet 28 aligned with a magnet 29 suspended from the conveyor frame and charged through wires 30. When the magnet is charged it operates through its attraction for the magnet 28 to set the brake on the disc 27 and when the electricity is cut off from the wires 30 the brake 26 is released. The wires 30 communicate with a brush 31 which in turn contacts with a feed wire 32 which extends entirely along the wall of the tunnel. A similar feed wire 33 extends along the wall of the tunnel and is arranged to contact with a brush 34 which in turn conducts electricity to the motor through the wires 35.

The wires 32 and 33 are connected to a main feed wire (not shown) by switch mechanism such that when the current is connected with one wire it will be disconnected from the other with the end in view that when the motor is started the brake will be released and vice versa.

Extending upwardly from the central portion of the frame 16 is a support 36 which has a hinge near the bottom thereof so as to permit the top of the support to move laterally in each direction and secured to the

movable and stationary parts of this support above and below the hinge and extending laterally therefrom are the respective arms 37 and 38, interposed between the free ends of which are strong coil springs 39 surrounding the stavs 40 which are secured to the arms 37 and have a slidable engagement with the arms 38. This construction operates to normally hold the support 36 in vertical position but at the same time permits the lateral movement thereof. This support extends up through the passageway along the top of the tunnel and moves along as the conveyer moves and is provided with the roller bearings 41 in the front and rear thereof which minimize the friction against the plates 14. The top of the support 36 is divided forming a Y in which an oblong platform 42 rests. This platform is provided to receive an artificial animal 43 which has a metallic plate 44 secured to its body and a set screw 45 passes through one arm of the Y carried by the top of the support 36 and also the platform 42 and is tapped into the plate 44 and secures the platform and lure in place.

The tunnel is usually constructed in the shape of a circle or ellipse so as to obviate any short angles or turns and thus minimize the friction of the support 36 against the sides of the pa[illegible]eway through which it extends.

This device is intended to be used for races and is provided for the purpose of substituting an inanimate lure for a live animal, thus retaining all of the exciting and advantageous features of the sport but eliminating the inhuman features connected with the use of a live animal for the race.

What I claim is:—

Per D Per B 1. A device of the character described including a tunnel and a track in the bottom thereof, a conveyor arranged to move on said track, a motive mechanism for said conveyor, ~~a flexible~~ support **yieldably secured to ~~carried by~~** the conveyor and projecting through a lengthwise passageway along the upper side of the tunnel and a lure mounted upon the upper end of said support.

1. ~~2.~~ 'A device of the character described composed of a track and a tunnel inclosing the same, a conveyer arranged to move on said track, a motive mechanism for said conveyor, a flexible support carried by the conveyor and projecting through a lengthwise passageway along the upper side of the tunnel, rotatable

Defendant's Exhibit P

bearings carried by the support and operating against the sides of said passageway and a lure mounted upon the upper end of said support and moving lengthwise of the tunnel and above the same.

2. ~~3.~~ A device of the character described composed of a tunnel and a track in the bottom thereof, a conveyer arranged to move on said track, a motive mechanism for said conveyer, a suitable brake mecha-
Per D nism provided therefor for the purpose of regulating
Per C the movement thereof, a ~~flexible~~ support **yieldably se-**
" " **cured** ~~thereto~~ **to** ~~carried by~~ the conveyor **and having lateral movement relative thereto** and projecting through a lengthwise passageway along the upper side
Insert B^1 of the tunnel B^1 **(2)** and a lure mounted upon the upper end of said support.

3. ~~4.~~ A device of the character described, composed of a tunnel having a lengthwise passageway along the upper side thereof, a track in the bottom of said tunnel, a conveyer arranged to move on said track, a motive mechanism for said conveyer, a suitable brake
Per A mechanism **provided** ~~porvided~~ for the purpose of regu-
Per B lating the movement thereof, a ~~flexible~~ support ~~car-~~
" " ~~ried be by~~ **yieldably secured to** the conveyor and **hav-**
Per C **ing lateral movement relative thereto and** projecting through the lengthwise passageway of the tunnel, suitable bearing members carried by said support and operating against the sides of the passageway, a platform carried by the upper end of said support and a lure secured to said platform.

~~5. In a device of the character described, a conveyor composed of a suitable frame work and carrier wheels upon which the frame work is mounted, a motor and an operative mechanism connecting the motor~~
Per B ~~with the carrier wheels, a yieldable and up standing~~
" " ~~support yieldably secured to carried by the conveyor and a lure carried by said support.~~

4. ~~6.~~ In a device of the character described, a conveyer comprising a frame work and carrier wheels, upon which the frame work is mounted, a motive mechanism operatively connected with the carrier wheels, a yieldable support upstanding from the frame work, laterally extending arms on each side of said support and resilient members interposed between the free ends of said arms, a paltform carried by the upper ends of said support and a lure secured on said platform.

A^1 (Cl. 5)

Defendant's Exhibit P

In Testimony Whereof I have signed my name to this specification in the presence of two subscribing witnesses.

Witnesses
A. C. Green,
May Montgomery.

Owen P. Smith.

OATH.

State of Texas,)
County of Harris.) ss:

Owen P. Smith, the above named petitioner being sworn or affirmed deposes and says that he is a citizen of the United States, and resident of Houston, County of Harris, State of Texas that he verily believe himself to be the original, first and sole inventor of the improvement in Lure Conveyors described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or patented in any country foreign to the United States on an application filed by him, or his legal representatives or assigns more than twelve months before this application, or in public use or on sale in the United States for more than two years prior to this application; and that no application for patent on said improvement has been filed by him or his legal representatives or assigns in any County foreign to the United States.

Inventor's Full name
Owen P. Smith.

Sworn to or affirmed and subscribed before me this 2nd day of December, 1911

G. Jay,
[Signature of Justice of Notary]
Notary Public in and for Harris Co. Tex.

When convenient always go before a Notary Public or other Official having a seal. If acknowledged before a Justice of the Peace, having no seal of office the Clerk's certificate must be attached showing official capacity of such Justice.

Defendant's Exhibit P

Div. 34 Room 304. 2—260 Paper No. 2

Address only "The Commissioner of Patents, Washington, D. C."

All communications respecting this application should give the serial number date of filing, and title of invention.

DEPARTMENT OF THE INTERIOR.

United States Patent Office

Washington

April 3, 1912.

MD
Patent Office
Apr. 3, 1912
Mailed.

Owen P. Smith
c/o Hardway &Cathey,
Houston, Texas.

Please find below a communication from the Examiner in charge of your application. Ser. No. 680,057; filed Feb. 26, 1912; for Lure Conveyors.

E. B. Moore,
Commissioner of Patents.

This application has been examined.

The drawings have been admitted only for purposes of examination. They can be corrected. The cost of correction can be obtained by addressing an inquiry to the Office Draftsman.

In claim 4, line 5, correct the spelling of "provided", and in line 6 substitute—by—for "be".

Claim 5 is rejected on #611,876, Walsh, Oct. 4, 1898 (Class 46; sub class 73).

G. R. Simpson,
Examiner, Div. 34.

Defendant's Exhibit P

Mail Room
Apr 11 1912
U. S. Patent Office

U. S. Patent Office
Apr 12 1912
Division XXXIV.

Serial No. 680,057 Paper No. 3
Amendment A

In the United States Patent Office.

Div. 34—Room 304

In re application of
Owen P. Smith,
Lure Conveyors,
Filed Feb. 26, 1912,
Serial No. 680,057

Commissioner of Patents,
Washington, D. C.

Sir:

In response to official action of Apr. 3 1912, amendment is hereby offered as follows:—

Claim 4, line 5, change "porvided" to —provided—; Line 6, change "be" to —by—.

Add the following claims:—

Per D 7. A device of the character described, including a tunnel and a track located therein, a conveyor arranged to move on said track, a motive mechanism for A¹ Per B said conveyor, a support **yieldably secured to** ~~carried by~~ the conveyor and projecting through a lengthwise passageway along the upper side of the tunnel and a lure mounted upon the upper end of said support.

5. 8. A device of the character described, including a tunnel and a track located therein, a conveyer arranged to move on said track, a motive mechanism Per C Per B for said conveyor, a ~~yieldable~~ support **hinged to** do ~~carried by~~ the conveyer **and laterally movable relative thereto** and projecting through a lengthwise passageway along the upper side of the tunnel and a lure mounted upon said support. **Sigs.**

REMARKS.

Claim 5, is believed to be clearly allowable over the reference cited, in that it provides for "a yieldable upstanding support carried by the conveyor and a lure, carried by said support.

Walsh, cited, shows the lure supports constructed

Defendant's Exhibit P

of flexible material, but are not secured upon the "upstanding support", as is applicant's device.

The additional claims are clearly allowable over the reference cited, in that they provide for "a tunnel and a track located therein and a conveyor arranged to move on said track . . . . a lengthwise passageway long the upper side of said tunnel".

This application is now believed to be in condition for final allowance, except for the correction of the drawings, which will be attended to at once, and a favorable action is solicited.

Respectfully,

Houston, Texas.
Apr. 8, 1912.

Hardway & Cathey,
Attys. for applicant.

IN THE UNITED STATES PATENT OFFICE.

Div. 34 Room 304. C

Mail Room
Apr. 11, 1912
U. S. Patent Office
In re application of
Owen P. Smith,
Lure Conveyors,
Filed Feb. 26, 1912.
Serial No. 680,057.

Commissioner of Patents.
Washington, D. C.

Sir:

Applicant desires to know the cost of correcting the drawings in the above styled and numbered application.

Respectfully,
Hardway & Cathey,
Attys. for Applicant.

Houston, Texas,
Apr. 8, 1912.

Defendant's Exhibit P

FCH

April 18, 1912.

Messrs. Hardway & Cathey,
Houston,
Texas.

Gentlemen:

Referring to your letter of the 8th instant, requesting to be advised as to the cost of correcting the drawing in the application of Owen P. Smith, Serial No. 680,057, you are informed that the cost will be $2.50.

Very respectfully,

Chief Clerk,
Per

DIV. 34 Room 304 2—260 288 Paper No. 4
MD

Address only "The Commissioner of Patents, Washington, D. C."

All communications respecting this application should give the serial number date of filing, and title of invention.

DEPARTMENT OF THE INTERIOR

EOF United States Patent Office

Washington, April 26, 1912.

Owen P. Smith,
c/o Hardway & Cathey,
Houston, Texas.

U. S. Patent Office
Apr. 26, 1912
Mailed

Please find below a communication from the Examiner in charge of your application. Ser. No. 680,057; filed Feb. 26, 1912; for Lure Conveyors.

E. B. Moore,
Commissioner of Patents.

Answering amendment filed April 11, 1912.

The following newly discovered references are now cited:

717,798, Beerwald, Jan. 6, 1903;
737,257, Majno, Aug. 25, 1903; Fig. 4;
(Pleasure Railways).

It is not thought necessary to explain the operation of these references other than to call attention to the "flexible support" shown in Fig. 4.

Claims 1, 3, 4, 5, 7 and 8 are rejected on the above references.

G. R. Simpson,
Examiner, Div. 34.

Defendant's Exhibit P

Serial No. 680,057 Paper No. 5
Amendment B

Mail Room
May 14 1912
U. S. Patent Office

U. S. Patent Office
May 15 1912
Division XXXIV

In the United States Patent Office.

Div. 34—Room 304.

In re application of
Owen P. Smith,
Lure Conveyors,
Filed Feb. 26, 1912.
Serial No. 680,057.

Commissioner of Patents,
Washington, D. C.

Sir:—

In response to official action of April 26, 1912, amendment is hereby offered as follows:—

Claim 1, line 4, cancel "flexible"; and also "carried by" and substitute therefor "yieldably secured to."

Claim 3, line 7, after "tunnel" insert anti-friction B[1] members carried by the support and operating against the sides of the passageway.

Claim 4, line 6, cancel "flexible"; cancel also "carried by" and substitute therefor —yieldably secured to—.

Claim 5, line 4, cancel "yieldably" and substitute therefor —and—; line 5, cancel "carried by" and substitute therefor —yieldably secured to—.

Claim 7, line 4, cancel "carried by" and substitute therefor —yieldably secured to—.

Claim 8, line 4, before "support" insert —yieldable—.

REMARKS.

The claims are now believed to be allowable over both Beerwald and Majno of record in-as-much as neither of these references show a support yieldably secured to the conveyor but rather show the lure hingedly or yieldably secured upon said support.

The object of applicant in providing a support yieldably secured to the conveyor is to minimize the friction between the support and the sides of the passage way around the tunnel. If the support was con-

Defendant's Exhibit P

nected rigidly to the conveyor, there would be great friction between it and the sides of the passageway, particularly in going around curves and in cases where the track upon which the conveyor runs is not entirely level.

All of the claims are now thought to be allowable over the references of record and a favorable action is requested.

Respectfully,
Hardway & Cathey,
Attys. for applicant.

Houston, Texas.
May 10, 1912.

Rejection
370

Div. 34 Room 304 | 2—260 | Paper No. 6

Address only "The Commissioner of Patents, Washington, D. C."

All communications respecting this application should give the serial number date of filing, and title of invention.

EOF MD

DEPARTMENT OF THE INTERIOR.
United States Patent Office
Washington

May 20, 1912.

Owen P. Smith,
c/o Hardway & Cathey,
Houston, Texas.

U. S. Patent Office
May 20, 1912
Mailed

Please find below a communitation from the Examiner in charge of your application. Ser. No. 680,057; filed Feb. 26, 1912; for Lure Conveyers.

E. B. Mooree,
Commissioner of Patents.

Answering amendment filed 14, 1912.

Attention is called to #583,109, Daniels, May 25, 1897; Pleasure Railways (Race). In Fig. 1, h is a yieldable support; rollers k are substantially in the slot of the railway. Reference #583,109 is added to either #717,798 or #737,257, and claims 1, 3, 4, 7, 7 and 8 are rejected thereon.

G. R. Simpson,
Examiner, Div. 34.

Defendant's Exhibit P

Serial No. 680.057 Paper No. 7
Amendment C

Mail Room
Jun 8 1912
Division XXXIV

U. S. Patent Office
Jun 7 1912
U. S. Patent Office

In the United States Patent Office.

Div. 34—Room 304.

In re application of
Owen P. Smith,
Lure Conveyors,
Filed Feb. 26, 1912,
Serial No. 680,057,

Commissioner of Patents,
Washington, D. C.

Sir:—

In response to official action of May 20, 1912, amendment is hereby offered as follows:—

Claim 3, line 5, cancel "flexible"; said line, cancel "carried by" and substitute therefor "yieldably secured thereto"; line 6, after "conveyor" insert —and having lateral movement relative thereto—.

C Claim 4, line 7, before "projecting" insert —having lateral movement relative thereto and—.

Claim 8, line 4, cancel "yieldable" inserted by amendment filed May 14, 1912; same line, cancel "carried by" and substitute therefor —hinged to—; same line, after "conveyor" insert —and laterally movable relative thereto—.

REMARKS.

The claims now presented are thought to be allowable over the references of record. None of the references show a support yieldably secured on the conveyor as called for in claims 1, 3, 4, and 7 and particularly they do not call for such a support having a lateral movement relative to the conveyor as called for in said claims.

Neither do any of the references show a support hinged to the conveyor and laterally movable relative thereto as called for in claim 8.

The references cited show a lure yieldably secured upon the support. Applicant's lure is rigidly secured to the support, but the support is yieldably secured to the conveyor so that it will not bind against the sides of the passageway along the tunnel but will yield thereto in case of friction. Mounting the lure yield-

Defendant's Exhibit P

ably upon the support as shown by the references, would not accomplish this object.

The claims presented are, therefore, thought to be allowable over the references of record and a favorable reconsideration is requested.

Respectfully,

Houston, Texas. Hardway & Cathey,
May 31, 1912. Attys. for Applicant.

Rejection
176

Div. 34 Room 304 2—260 Paper No. 8

Address only "The Commissioner of Patents, Washington, D. C."

All communications respecting this application should give the serial number date of filing, and title of invention.

EOF MD

DEPARTMENT OF THE INTERIOR.

United States Patent Office

Washington

June 5, 1912.

Owen P. Smith,
c/o Hardway & Cathey,
Houston, Texas.

U. S. Patent Office
June 5, 1912
Mailed

Please find below a communication from the Examiner in charge of your application. Ser. No. 680,057; filed Feb. 26, 1912; for Lure Conveyors.

E. B. Moore,
Commissioner of Patents.

Answering amendment filed June 3, 1912.

Attention is called to #811,284, Gaynor, Jan. 30, 1906 (Pleasure Railways (Race). In Fig. 4 and at N10 will be seen a yielding connection of the lure with the conveyor.

Claims 1, 5 and 7 are rejected on #811,284 in connection with former references showing a tunnel and a conveyor thereon.

Further, the amendments to claims 3 and 5 place them in a confused condition. But it is not deemed necessary to refer to claim 5. But in claim 3 correct the following language: "a support yieldably secured thereto the conveyor", etc.

G. R. Simpson,
Examiner. Div. 34

Defendant's Exhibit P

Mail Room
Jun 12 1912
U. S. Patent Office

U. S. Patent Office
Jun 13 1912
Division XXXIV.

Serial No. 680.057 Paper No. 9
Amendment D

In the United States Patent Office.

Div. 34—Room 304.

In re application of
Owen P. Smith,
Lure Conveyors,
Filed Feb. 26, 1912,
Serial No. 680,057.

Commissioner of Patents,
Washington, D. C.

Sir:—

In response to official action of June 5, 1912, amendment is hereby offered as follows:—

Cancel claims 1, 5 and 7 and renumber the remaining claims from 1 to 5 inclusive, respectively.

Renumbered claim 2, in the insertion added to line 5 of said claim by amendment filed June 3, 1912, change "thereto" to —to—. D

REMARKS.

It is believed that the application is now in condition for allowance and a favorable action is requested.

Respectfully,
Hardway & Cathey,
Attys. for applicant.

Houston, Texas.
June 8, 1912.

Defendant's Exhibit P

393 Office Letter

Div. 34 Room 304 2—260 Paper No. 10

Address only "The Commissioner of Patents, Washington, D. C."

All communications respecting this application should give the serial number, date of filing, and title of invention.

EOF MD

DEPARTMENT OF THE INTERIOR.

United States Patent Office

Washington

June 14, 1912.

Owen P. Smith
c/o Hardway & Cathey,
Houston, Texas.

U. S. Patent Office
June 14, 1912
Mailed

Please find below a communication from the Examiner in charge of your application. Ser. No. 680,057; filed Feb. 26, 1912; for Lure Conveyors.

E. B. Moore,
Commissioner of Patents.

Answering amendment filed June 12, 1912.

This application now appears to be ready for allowance except the drawing as referred to in Office action dated April 3, 1912. When the same is corrected the attorney should notify the Examiner to ensure prompt action.

G. R. Simpson,
Examiner, Div. 34.

Serial No. 680,057 Paper No. 11
Amendment to Dog. C

Edward V. Hardway Wm. A. Cathey

Hardway & Cathey
Patent Attorneys

Trade Marks, Copyrights, Patent Litigation

Suits 303-4 Lumbermans Bank Bldg.

Houston, Texas, June 18, 1912.
Phones 4790

$2.50 Received
Jun. 21, 1912 C
CHIEF CLERK U. S. Patent Office
Dft.

Defendant's Exhibit P

Commissioner of Patents,
Washington, D. C.

Sir:

Replying to official letter, No. 74752, dated April 18, 1912, $2.50 is enclosed herewith to cover the cost of correcting the drawings of Owen P. Smith, serial No. 680,057.

Yours respectfully,
Hardway & Cathey.

WAC/M
Enc.

Office Letter 368

Div. 34 Room 304 2—260 Paper No. 12

Address only "The Commissioner of Patents, Washington, D. C." — All communications respecting this application should give the serial number date of filing, and title of invention.

EOF MD

DEPARTMENT OF THE INTERIOR.
United States Patent Office
Washington

July 16, 1912.

Owen P. Smith,
c/o Hardway & Cathey,
Houston, Texas.

U. S. Patent Office
July 16, 1912
Mailed

Please find below a communication from the Examiner in charge of your application. Ser. No. 680,057; filed Feb. 26, 1912; for Lure Conveyors.

E. B. Moore,
Commissioner of Patents.

The oath in this application was executed beyond the time limit set in **ex parte** Branna. A new oath is required. Otherwise this application is allowable.

G. R. Simpson,
Examiner, Div. 34.

Defendant's Exhibit P

Serial No. 680,057 Paper No. 13

Patent Office
Jul. 23, 1912
Division XXXIV

Mailed
Jul. 22, 1912
U. S. Patent Office
New Oath

IN THE UNITED STATES PATENT OFFICE.

Div. 34—Room 304.

In re application of
Owen P. Smith,
Lure Conveyors,
Filed Feb. 26, 1912,
Ser. No. 680,057.

Commissioner of Patents,
Washington, D. C.

Sir:

In response to official action of July 16, 1912, a new oath is filed herewith, as required in said action.

REMARKS.

This application is now believed to be in condition for final allowance and it is requested that the same be passed for issue.

Respectfully,
Hardway & Cathey,
Attys. for applicant.

Houston, Texas,
July 19, 1912.

OATH.

Jul. 12, 1912

State of Louisiana,
County of Orleans. } ss.

Owen P. Smith, the above named petitioner being sworn or affirmed deposes and says that he is a citizen of the United States, and resident of Chicago, County of Cook, State of Illinois, that he verily believe himself to be the original, first and sole inventor of the improvement in Lure Conveyors described and claimed in the specification; Filed in the United States Patent Office, Feb. 26, 1912; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof or patented or described in any printed publication in any country before his invention or dis-

Defendant's Exhibit P

covery thereof, or more than two years prior to this application, or patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months before this application, or in public use or on sale in the United States for more than two years prior to this application; and that no application for patent on said improvement has been filed by him or his legal representatives or assigns in any Country foreign to the United States.

Inventor's Full name
Owen P. Smith.

Sworn to or affirmed and subscribed before me this 27th day of February, 1912.

Arthur B. Leopold,
[Signature of Justice or Notary]
Notary Public.
[Official Character]
Notary Public.

(Seal)

When convenient always go before a Notary Public or other Official having a seal. If acknowledged before a Justice of the Peace, having no seal of office the Clerk's certificate must be attached showing official capacity of such Justice.

Defendant's Exhibit P

SCP.

2—181 Serial No. 680057.

Address only
The Commissioner of Patents
Washington, D. C.

DEPARTMENT OF THE INTERIOR.
United States Patent Office
Washington

July 27, 1912.

Owen P. Smith:

Sir: Your Application for a patent for an Improvement in Lure Conveyers, filed Feb. 26, 1912, has been examined and Allowed.

The final fee, Twenty Dollars, must be paid not later than Six Months from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed with an additional fee of $15, under the provisions of Section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you will also send, Distinctly and Plainly Written, the name of the Inventor and Title of Invention as Above Given, Date of Allowance (which is the date of this circular), Date of Filing, and, if assigned, the Names of The Assignees.

If you desire to have the patent issue to Assignees, an assignment containing a Request to that effect, together with the Fee for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the patent, uncertified copies of the drawings and specifications may be purchased at the price of Five Cents Each. The money should accompany the order. Postage stamps will not be received.

Final fees will Not be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully,

E. B. Moore,
Commissioner of Patents.

Hardway & Cathey,
Houston,
Texas.

IN REMITTING THE FINAL FEE GIVE THE SERIAL NUMBER AT THE HEAD OF THIS NOTICE.

UNCERTIFIED CHECKS WILL NOT BE ACCEPTED.

Defendant's Exhibit P

Edward V. Hardway Wm. A. Cathey

HARDWAY & CATHEY.

Patent Attorneys

Trade Marks, Copywrights, Patent Litigation

Suits 303-4 Lumbermans Bank Bldg. Phones 4790

Houston, Texas, Aug. 8, 1912.

$20.00 Received
Aug. 12, 1912
C. C. U. S. Patent Office
Deft.

Commissioner of Patents,
Washington, D. C.

Sir:

Enclosed is $20.00, the final government fee in the application of Owen P. Smith, Lure Conveyors, Filed Feb. 26, 1912, Ser. No. 680,056, Allowed July 27, 1912, assigned to J. G. Lee, Dave A. Weis, Pat Foley and..... Green.

It is requested that this patent issue at once.

Respectfully,
Hardway & Cathey.

WAC/M

UNITED STATES DISTRICT COURT.

Northern District of Ohio (Eastern Division)

Mail Room
Aug. 7, 1926
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (~~41~~ 42 Stat. L.....), you are advised that there was filed on the 5th day of August, 1926, in this court an action, suit, or proceeding No. 1982, entitled:

UNCERTIFIED CHECKS WILL NOT BE ACCEPTED

Defendant's Exhibit P

Name Owen P. Smith, Plaintiff,
Address Miami, Florida,

versus

Name W. N. Steinman, et al. Partners, etc., Defendant,
Address 204 Medford Bldg. 21 Main st.,
brought upon the following patents:
D[5]

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sep. 10, 1912.	Owen P. Smith,
2	1,379,224	May 24, 1921.	do
3	1,410,842	Mch. 28, 1922.	do
4	1,507,439	Sep. 2, 1924.	do
5	1,507,440	Sep. 2, 1924.	do
6	1,591,569	July 6, 1926.	do

In the above-entitled case, on the..... day of..... ....., 192 , the following patents have been included by.....(insert amendment, answer, cross bill, or other pleading):

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness I have affixed my hand this 5th day of August, 1926, at Cleveland, Ohio.

B. C. Miller,
Clerk of said Court.
By C. A. Wilder Deputy Clerk.

Defendant's Exhibit P

UNITED STATES DISTRICT COURT.

Southern District of Ohio

Mail Room
Oct. 5, 1926
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (~~41~~ 42 Stat. L.....), you are advised that there was filed on the 30th day of September, 1926, in this court an action, suit, or proceeding No. 464, entitled:

Name Owen P. Smith, Plaintiff,
Address Miami, Dade County, Florida

versus

Name Franklin Kennel Club, Limited, Edward H. McGrath, Thomas H. Buxton, Edward Siefert, William B. Wheeland, Reinhart Wilke, and Robert Dienst, Defendants,
Address Grove City, Franklin County, Ohio

brought upon the following patents:

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	Owen P. Smith
3	1,410,842	March 28, 1922	Owen P. Smith
4	1,507,439	Sept. 2, 1924	Owen P. Smith
5	1,507,440	Sept. 2, 1924	Owen P. Smith
6	1,591,569	July 6, 1926	Owen P. Smith

In the above-entitled case, on the..... day of..... ....., 192 , the following patents have been included by.....(insert amendment, answer, cross bill, or other pleading):

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

Defendant's Exhibit P

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness Whereof I have affixed my hand this 4th day of October, 1926, at Columbus, Ohio.
(Seal)

Harry F. Rabe,
Clerk of said Court.

UNITED STATES DISTRICT COURT.
Eastern District of Louisiana

Mail Room
Dec. 4, 1926
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (~~41~~ 42 Stat. L.....), you are advised that there was filed on the 1st day of December, 1926, in this court an action, suit or proceeding No. 18,596, entitled:
Name Owen P. Smith, Plaintiff,
Address Miami, Florida

versus

Name American Electric Rabbit Racing Assn. Inc., Et Als, Defendants,
Address New Orleans, La.
brought upon the following patents:
E[5]

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912.	Owen P. Smith,
2	1,379,224	May 24th, 1921.	do
3	1,410,842	March 28, 1922.	do
4	1,507,439	Sept. 2, 1924.	do
5	1,507,440	Sept. 2, 1924.	do
6	1,591,569	July 6, 1926.	do

In the above-entitled case, on the..... day of..... ....., 192 , the following patents have been included by..... (insert amendment, answer, cross bill, or other pleading):

Defendant's Exhibit P

Patent No.	Date of Patent	Patentee
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....
4.....	.....	.....
5.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness Whereof I have affixed my hand this 2nd day of December, 1926, at New Orleans, La.
(Seal)

H. J. Carter,
Clerk of said Court.

UNITED STATES DISTRICT COURT.
Eastern District of Louisiana

Mail Room
Jan. 15, 1927
U. S. Patent Office

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (41 42 Stat. L.....), you are advised that there was filed on the 12th day of January, 1927, in this court an action, suit, or proceeding No. 18,651, entitled:
Name Owen P. Smith, Plaintiff,
Address Miami, Dade County, Florida.

versus

Name Louisiana Greyhound Club, Incorporated, et als, Defendants,
Address Jefferson Parish, Louisiana
brought upon the following patents:
B[5]

Defendant's Exhibit P

	Patent No.	Date of Patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith,
2	1,379,224	May 24, 1921	do
3	1,410,842	Mar. 28, 1922	do
4	1,507,439	Sept. 2, 1924	do
5	1,507,440	Sept. 2, 1924	do
6	1,591,569	July 6, 1926	do

In the above-entitled case, on the..... day of..... ....., 192 , the following patents have been included by.....(insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness Whereof I have affixed my hand this 13th day of January, 1927, at New Orleans, Louisiana.
(Seal)

H. J. Carter,
Clerk of said Court.

For O. P. Smith Patent No. 1,038,504 patented Sept. 10, 1912. See Defendant's Exhibit "O" page 275 to 280.

Defendant's Exhibit P

2—421

1912

CONTENTS:

104 Railways.
Pleasure Railways.

Print

1. Application √ papers, O. K.
2. Rejected Apr. 3, 1912
3. Amendment A, April 11-1912
4. Rejection, April 26-1912
5. Amendment B, May 14-1912
6. Rejection, May 20, 1912
7. Amendment C, June 3-1912
8. Rejection, June 5-1912
9. Amendment D, June 12-1912
10. Office Letter, June 14-1912
11. Amendment to Dog, June 21-1912
12. Office Letter, July 16-1912
13. New Oath, July 22,1912
14. Notice of Suit, Aug. 7-1926
15. Notice of Suit, Oct. 5-1926
16. Notice of Suit, Dec. 4-1926
17. Notice of Suit, Jan. 15-1927.

DEFENDANTS' EXHIBIT "Q"

WHITEHEAD PATENT NO. 529,987

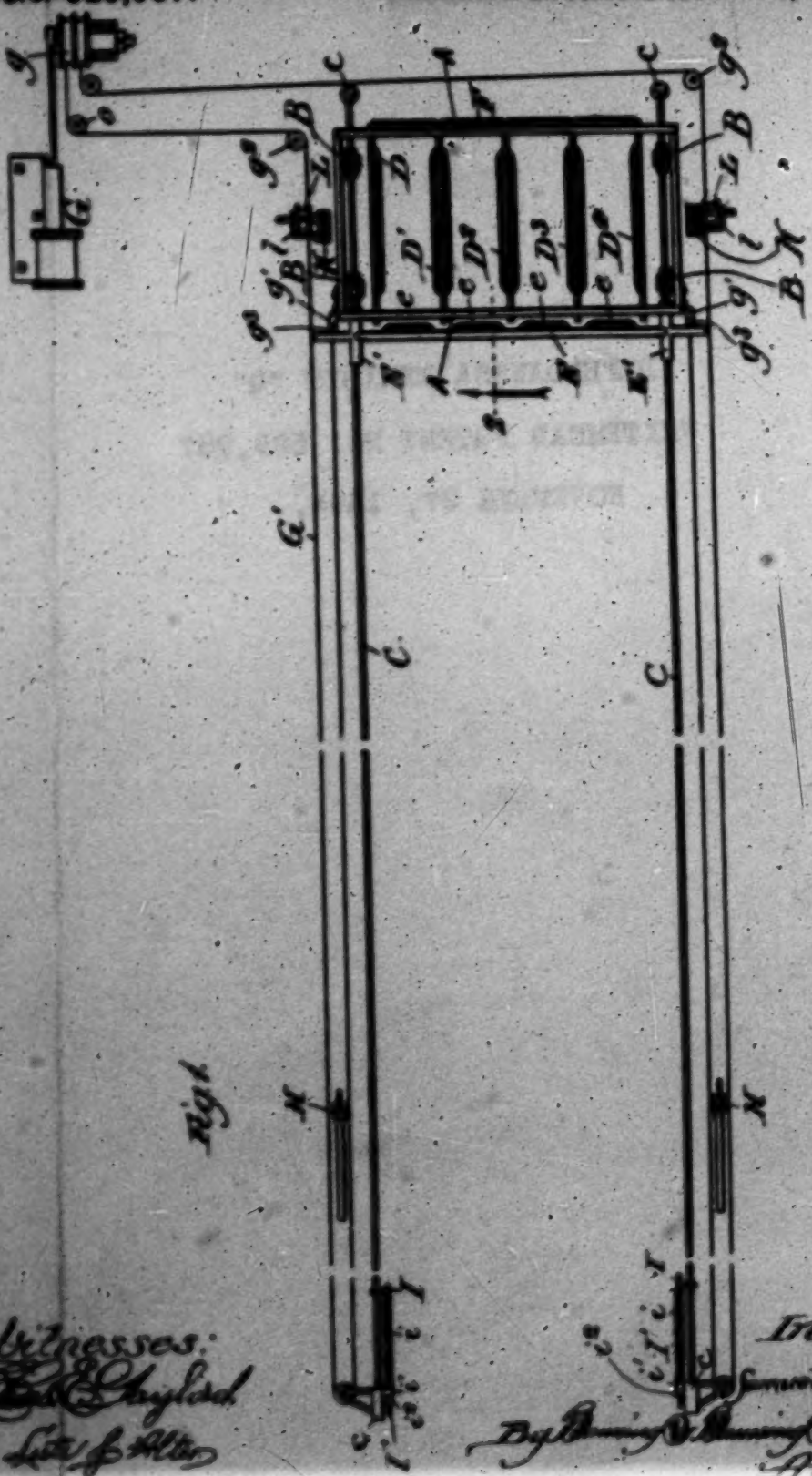
NOVEMBER 27, 1894.

(No Model.) 3 Sheets—Sheet 1.

S. B. WHITEHEAD.

TRAINING APPARATUS.

No. 529,087. Patented Nov. 27, 1894.



Witnesses:
Chas. E. Hazlett
Lutz & Miller

Inventor:
Samuel B. Whitehead
By Burton & Burton Cobleigh
Attys.

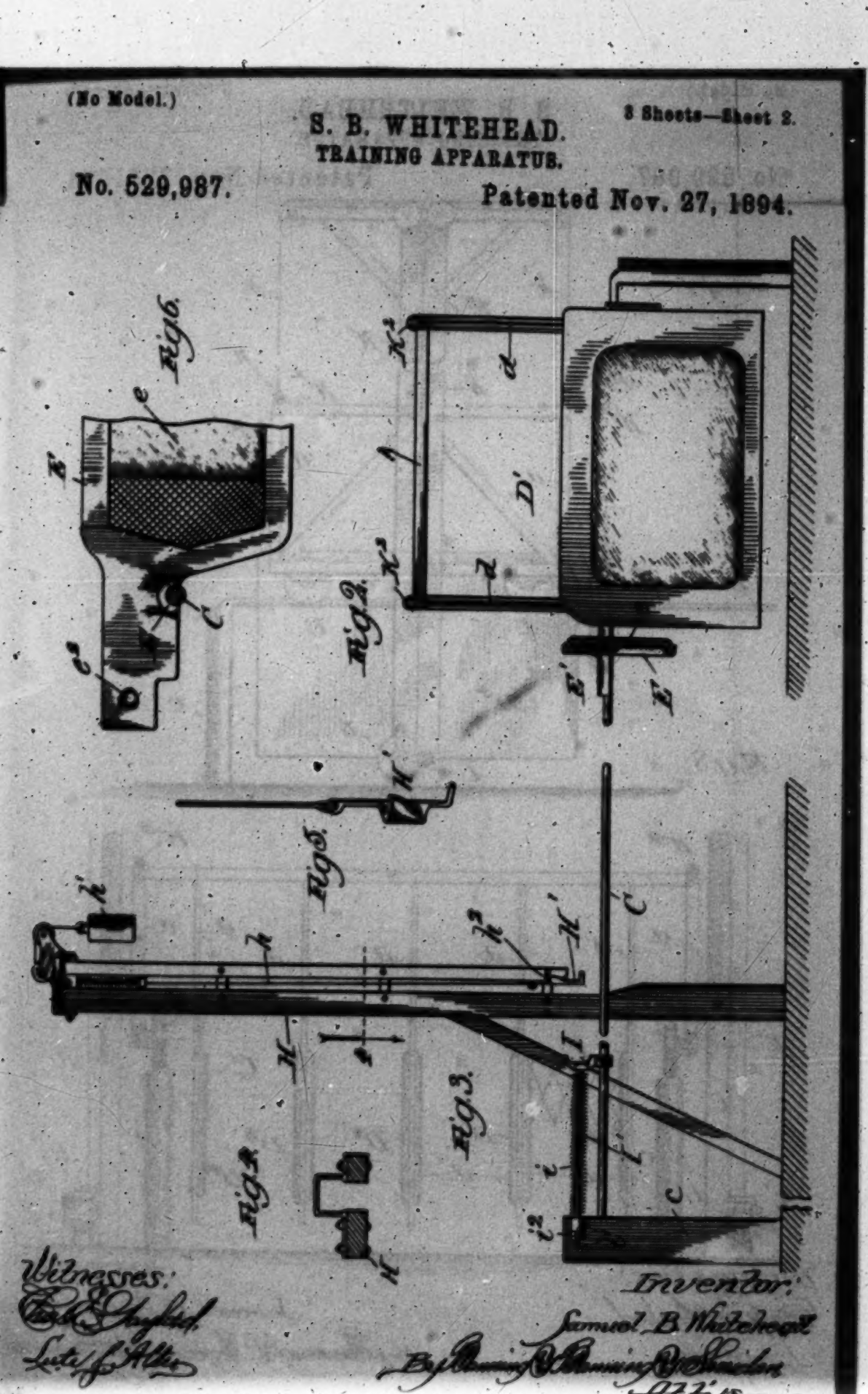
(No Model.)

3 Sheets—Sheet 2.

S. B. WHITEHEAD.

TRAINING APPARATUS.

No. 529,987. Patented Nov. 27, 1894.



Witnesses:
Chas. E. Shufeldt.
Lucius G. Fisher.

Inventor:
Samuel B. Whitehead
By Manning & Manning & Sheridan
Attys.

(No Model.) 3 Sheets—Sheet 3.

S. B. WHITEHEAD.

TRAINING APPARATUS.

No. 529,987. Patented Nov. 27, 1894.

Fig. 7.

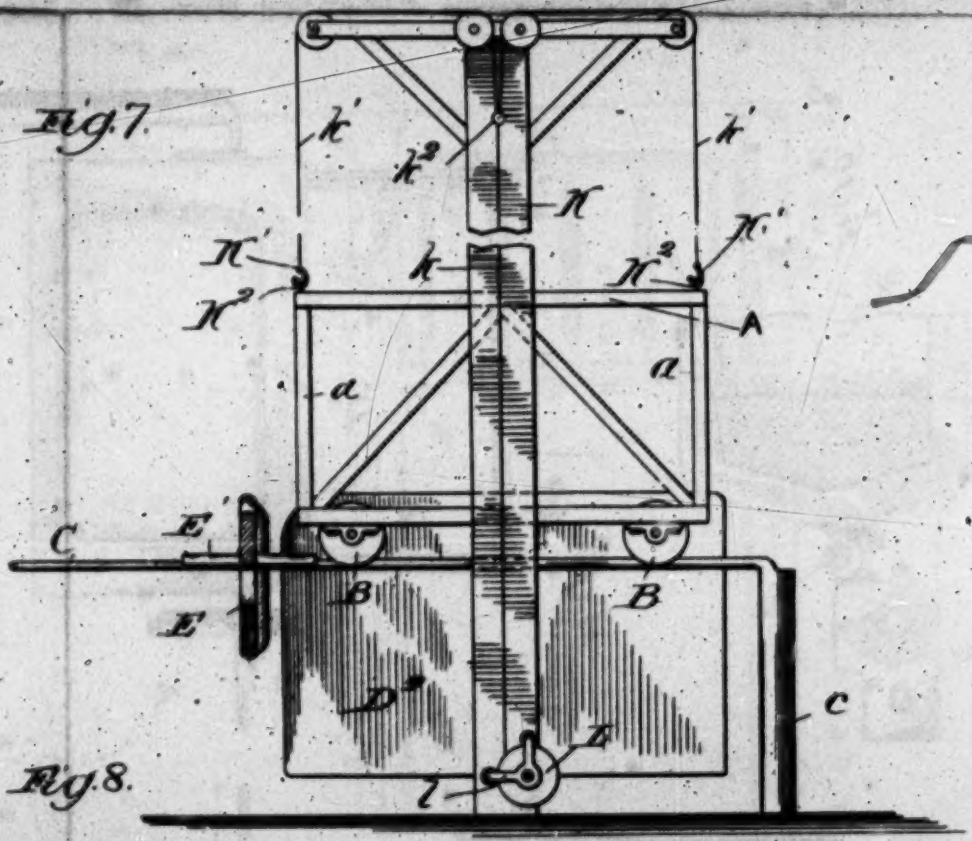
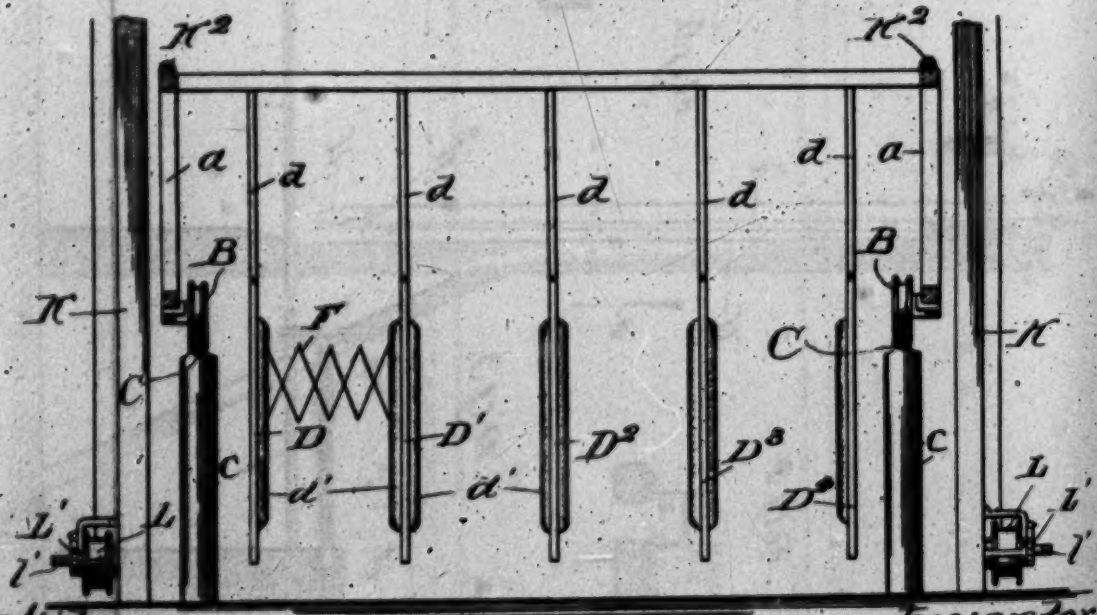
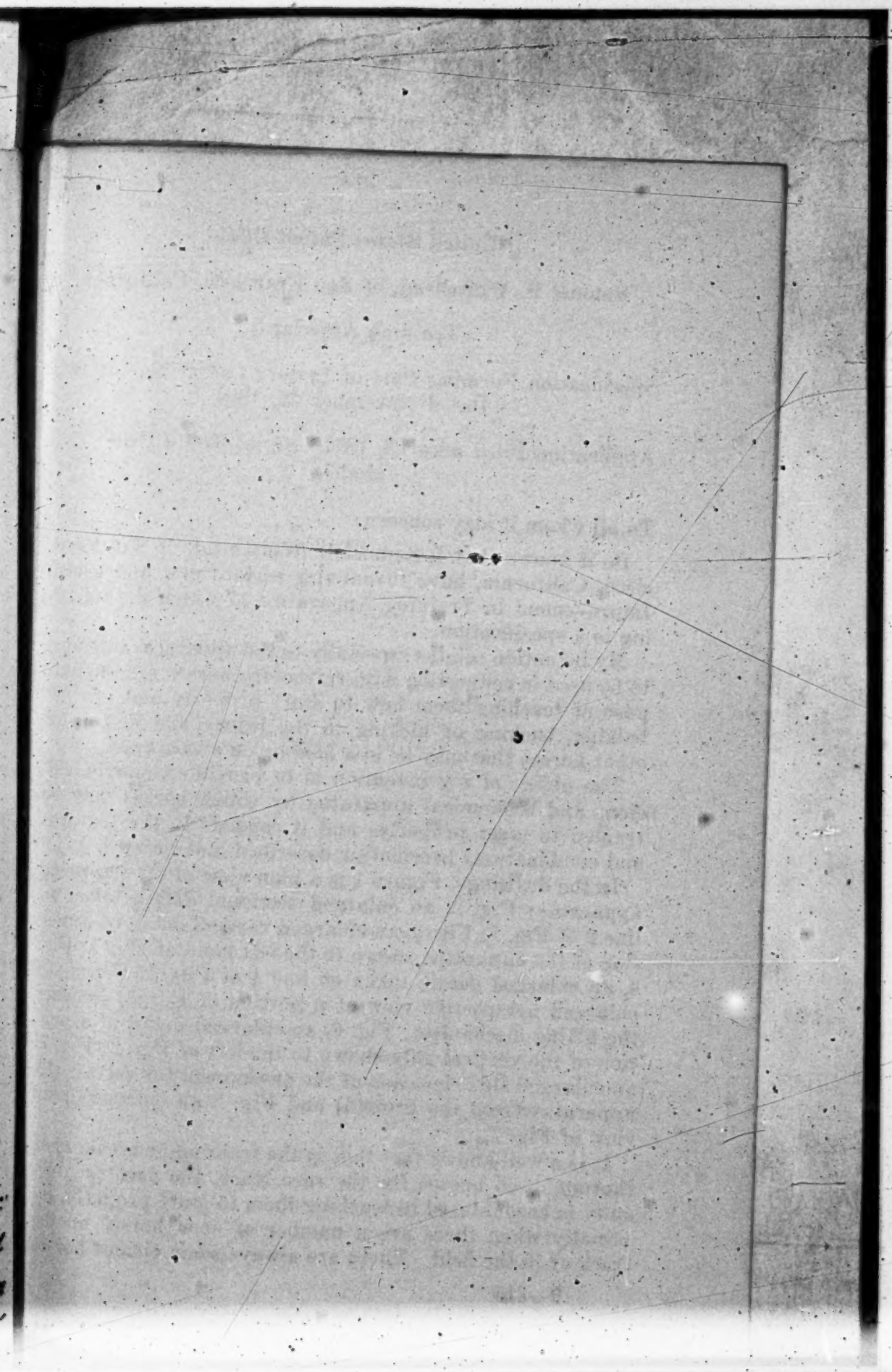


Fig. 8.



Witnesses:
E. C. Stuyvesant
Leta J. Atlee

Inventor:
Samuel B. Whitehead
By Manning & Manning & Sheridon
Attys.



United States Patent Office

Samuel B. Whitehead, of San Francisco, California

Training Apparatus

Specification Forming Part of Letters Patent No. 529,987, Dated November 27, 1894

Application Filed June 28, 1894. Serial No. 516,028. (No Model)

To all whom it may concern:

Be it known that I, Samuel B. Whitehead, of San Francisco, California, have invented a certain new and useful Improvement in Training Apparatus, of which the following is a specification.

My invention relates especially to the apparatus intended to be used in connection with refractory horses for the purpose of teaching them how to start properly and prevent balking, backing or kicking to the injury and danger of other horses that may be in a field or on a race track.

The object of my invention is to provide a simple, efficient and economical apparatus by which horses may be trained to start properly; and it consists in the features and combinations hereinafter described and claimed.

In the drawings, Figure 1 is a plan view of my improved apparatus; Fig. 2, an enlarged sectional detail, taken on line 2 of Fig. 1; Fig. 3, an enlarged vertical detail of a portion of the apparatus shown to the left hand of Fig. 1; Fig. 4, an enlarged detail, taken on line 4 of Fig. 3; Fig. 5, an enlarged perspective view of a portion of Fig. 3, showing the lifting mechanism; Fig. 6, an enlarged detail of a portion of the vertical gate shown to the left of Fig. 2; Fig. 7, an enlarged side elevation of the mechanism for raising the apparatus from the ground; and Fig. 8 an enlarged rear view of Fig. 7.

It is a well-known fact that in the training or breaking of thoroughbred horses for the race track, the greatest difficulty is encountered in teaching them to start properly, especially when there are a number of such horses on the track or in the field. There are always some vicious horses

in a crowd, who, with their kicking and biting proclivities endanger the life and limbs of the other animals as well as their riders. Again, when horses are brought to the starting line, some will back and jump and others will get away in the lead, causing an endless amount of confusion and trouble, as well as the loss of considerable time in getting the horses properly started. To avoid the above objections and provide a machine by which one or more horses are compelled to start in compliance with the wish of the starter in charge of them, is the principal object of my invention.

In constructing my improvement, I provide a framework, A, suspended above and across a raised track, or any desired locality, on trolleys, B, which, in turn, are supported on and adapted to be moved in a longitudinal direction upon tracks, C, supported above the ground, as shown in Figs. 3 and 7, in any desired manner—preferably by means of posts, *c*. Suspended from this frame—see Figs. 1 and 8—are a number of partitions, D D' D² D³ and D⁴, by means of tubing, *d*, which rigidly suspends these partitions so that they have very little, if any, lateral motion. These partitions, therefore, divide the space of the track between the upright, supporting portions, *a*, of the frame, into any desired number of stalls, in which may be placed a horse and his rider, for the purpose of starting in a race or breaking the animal in, to acquire the proper knowledge in starting. These partitions above referred to are padded at *d'*, so that should either the horse or rider be thrown against them, they will not be materially injured. Immediately in front of these stalls, and at about the height of a horse's head, I place a movable screen, E, having its frame portion made of any light material, and the main portion—as at *e*—of wire mesh, though I do not desire to be limited to the use of any material. This movable screen is provided at each end with grooved supports, E', which rest on the track, C, along which it is moved when the stalls are moved.

To force the horses along when the stalls are moved forward, I provide the rear portion of each stall with a gate, F, made preferably of pieces of metal pivoted together in a "lazy-tong" manner, having one end pivoted to the framework of the stall and the other provided with a catch to catch the opposite stall of the frame, so that when it is necessary to lead a horse into the stall such gate may be opened, the horse and rider driven in, and the gate after-

ward closed. I prefer to provide each stall with an independent gate so that only those stalls necessary to be used need be opened; but I do not desire to be limited to an independent gate, as it is evident one gate might be used to close all of the stalls simultaneously, or two gates may be used—or as many gates as desired; and while I desire to make the gate in a "lazy-tong" manner, it is evident to those skilled in the art that other styles of gate might be used.

To propel the apparatus along at the desired speed, I provide a motor engine, G, having its piston rod connected to a rotating drum, g, to which is secured a cable or rope, G', which has its other end secured, as shown in Fig. 1, to the framework of the apparatus at g'. This rope or cable is passed around suitable pulleys, g^2, which take up the slack in such cable and give it the required tension, and also to more readily facilitate the operation of the cables. I provide the cable with an adjustable collar, a^2—see Fig. 1—against which the screen gate, E, rests, so that as the motor is started and the cable wound up, the apparatus is moved along on the track, carrying with it the screen gate. This adjustable collar may be made of any convenient form, but I prefer to make it of an ordinary collar having a central opening and set screw for securing it in any desired portion of the cable.

When the desired momentum has been acquired by the apparatus and the horses are moving along readily therewith, it is necessary to raise the screen gate, E, out of the way, so that the horses may move out of the stalls if they desire and the stalls be moved along a short distance farther—say from twenty to fifty feet. To accomplish this, I provide upright posts, H—located to the left of the apparatus as shown in Fig. 1, and at each side of the track. Suspended from this upright, over suitable pulleys, is a cord, h, provided at one end with a catch, H', and at the other end with a weight, h', so that as the starting apparatus nearly reaches its limit of motion, the screen gate will contact the catches, H', which are normally held in a down position by means of a pin, h^2, on a portion of the upright post. The catches enter the opening, e^2, in the screen frame, and as the screen is propelled along, it releases the catches from their retaining mechanism. The weights are

out of the way of the horses, so that they can pass out at the front of the stalls. The rest of the machine with the stalls is carried along farther until it contacts the cushion stops, I, which serve to prevent any destroying shock to the mechanism. These cushion stops are made preferably of an upright extending portion, I, provided with a perforation through which the track, C, is passed, and which is supported by the tracks. They are also provided with longitudinal bars or rods, *i*, which extend through perforated lugs, *i'*, in one of the upright posts. Intermediate such lugs and the stop proper are interposed spiral springs, I', which serve to hold the stops in their forward position and act as a cushion to the moving apparatus. The longitudinal bars, *i*, are provided with ordinary collars and set screws, *i²*, for the purpose of adjusting the stops to their proper positions.

When it is desired to use the track or field without this starting or training apparatus, some means must be provided to remove the apparatus from the track, and at the same time permit it to be readily replaced thereon. To accomplish this result, I provide two vertical posts, K—located to the right of Fig. 1—on each side of the track. Passed over suitable idler wheels at the upper end of the posts, K, is a cable or rope, *k*, preferably divided at its upper portion into two parts, *k'*, which join the main rope at *k²*. These portions of the cable, *k'*, are provided with hooks, K', which engage eyes or perforated pieces, K², on the frame portion of the apparatus. The lower end of the cord is passed around a windlass or winding drum, L, which is secured to the upright in any convenient manner, preferably by means of a bracket or frame, *l*. This windlass is provided with a pawl or ratchet, L', as shown in Fig. 8, and its rotating shaft with a square end, *l*, to which may be secured a crank handle for the purpose of turning the drum. An operator is stationed at each side of the track, and by winding the drum the apparatus is lifted from the track to any suitable height to be out of the way of running horses until it is again desired to use the apparatus. Instead of using two drums at each side of the track, I may use one and have the cord or cable passed across the track, so that one operator may raise the entire mechanism simultaneously and prevent buckling or tipping; or, if desired, the windlass may be connected to the same motor that

propels the apparatus along the track, and thus be operated by mechanical power or energy.

In operation, the apparatus is lowered onto its track. The screen gate, E, is also lowered and brought into the position shown in Fig. 1; the gates, F, opened, and as many horses and riders driven into their separate stalls as desired. The gates are then closed, and the starter or person having it in charge gives the signal of "ready," and—if an electric motor be used—may start the mechanism going. If the horses be unruly or balky, the gate, F, coming behind them, strikes them and pushes them along until, in order to keep ahead of the mechanism, they acquire the desired momentum or speed, when the screen gate striking the mechanism above described is raised instantaneously out of the way and the horses started. After the horses have been started, the machine is run back on the same tracks to its initial position, raised up out of the way, and lowered when desired to again use it. In this manner of starting or training it will be seen that each horse, in occupying a reserved or special portion of the track or field, is under the control of the starter and cannot run away. Neither can he in any way injure another horse or rider, so that my improvement has the additional advantage of safety to the horse and rider, which is now a large and important factor in the training, racing or breaking of horses.

While I have entered into a more or less minute description of the details of my invention, I do not desire to be limited thereto unduly, any more than is pointed out in the claims. On the contrary, I contemplate all proper changes in form, construction and arrangement, the omission of parts, and the substitution of equivalents, as circumstances may suggest or render expedient.

I claim—

1. In a horse starting machine, the combination of a track upon which the machine is moved and mounted, and a frame portion mounted on and adapted to be moved on such track and provided with two or more individual stalls, substantially as described.

2. In a horse starting machine, the combination of a track, a frame mounted and adapted to move on such track, and several partitions secured to such frame to form two or more individual stalls, substantially as described.

3. In a horse starting machine, the combination of a track upon which the mechanism is moved, a frame portion provided with two or more individual stalls mounted on and adapted to be moved on such track, and means for propelling the machine, substantially as described.

4. In a horse starting machine, the combination of a track upon which the machine is moved and mounted, a frame portion mounted on and adapted to be moved on such track, several partitions secured to such frame to form one or more stalls, a removable gate in front of the stalls, means for removing such gate at a desired position, and means for propelling the machine on its track, substantially as described.

5. In a horse starting machine, the combination of a track upon which the machine is moved and mounted, a frame portion mounted on and adapted to be moved on such track, several partitions secured to such frame to form one or more stalls, a removable gate in front of the stalls, means for removing such gate or gates simultaneously at a desired position, means for closing the rear of the stalls to force the horses along, and means for propelling the machine, substantially as described.

6. A horse starting machine, comprising a track upon which the machine is moved and mounted, a frame portion mounted on and adapted to be moved on such track and provided with several stalls, and means for raising such frame portion with its stalls up and out of the way, substantially as described.

7. A horse starting machine, comprising a track upon which the machine is moved and mounted, a frame portion mounted on and adapted to be moved on such track and provided with one or more stalls, means for propelling the frame along its track, and a cushion stop for such frame, substantially as described.

Samuel B. Whitehead.

Witnesses: Thomas F. Sheriden, Thomas B. McGregor.

DEFENDANTS' EXHIBIT "R"

ANDREW PATENT NO. 543,762

JULY 30, 1895

(No Model.) 2 Sheets—Sheet 1.

J. T. ANDREW.

DEVICE FOR STARTING RACE HORSES.

No. 543,762. Patented July 30, 1895.

Fig: 1.

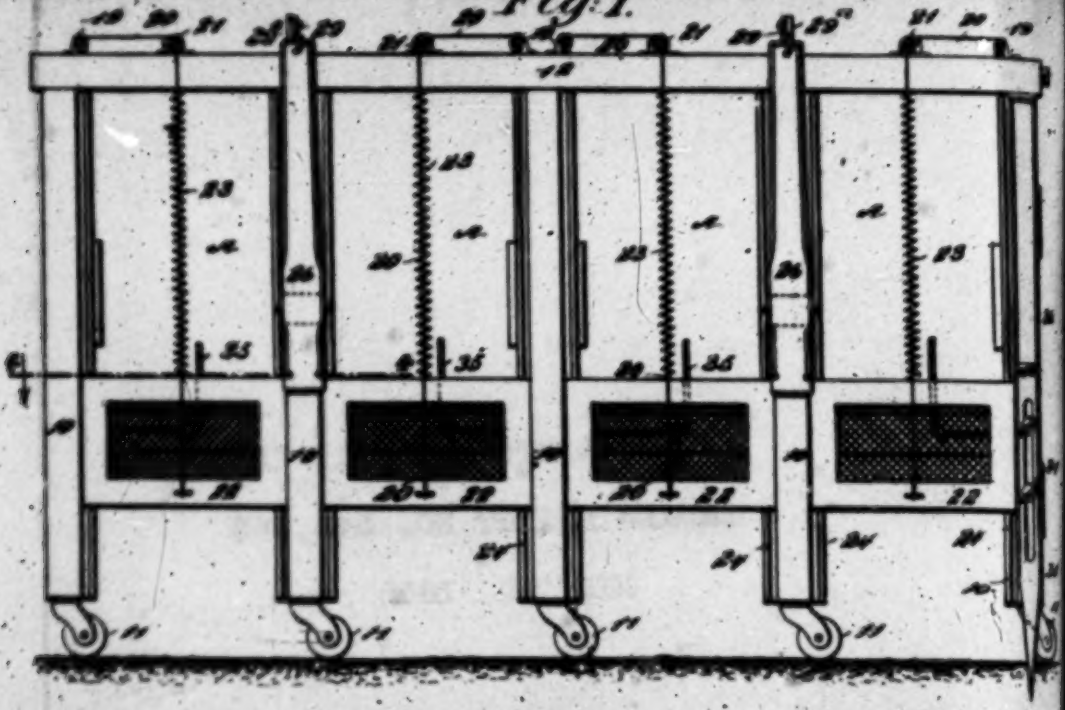
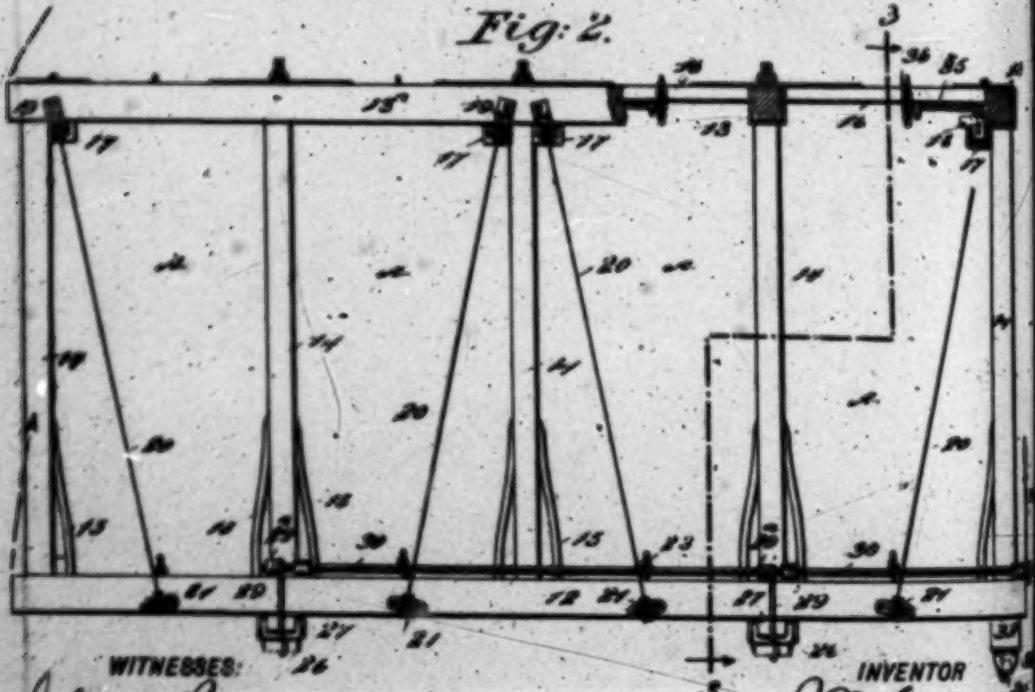


Fig: 2.



WITNESSES:

John A. Penna

J. Hendrickson

INVENTOR

J. T. Andrew

BY

Munn & Co

ATTORNEYS.

(No Model.) 2 Sheets—Sheet 2.

J. T. ANDREW.

DEVICE FOR STARTING RACE HORSES.

No. 543,762. Patented July 30, 1895.

Fig. 3.

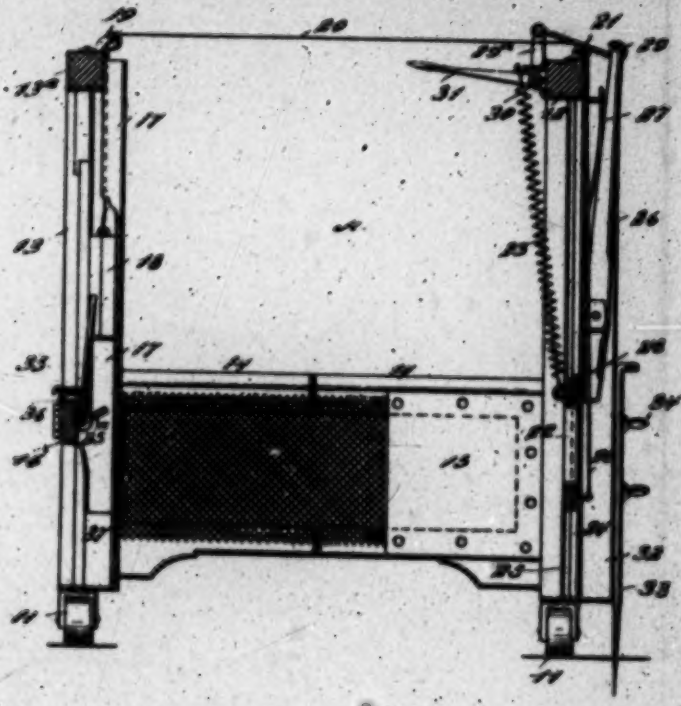
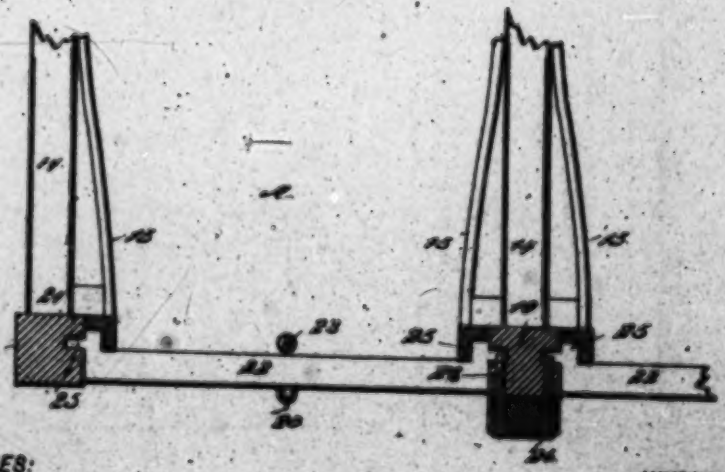


Fig. 4.



WITNESSES:

John A. Rennie

J. Fred. Acker

INVENTOR

J. T. Andrew

BY

Munn & Co

ATTORNEYS.

United States Patent Office

James T. Andrew, of Montgomery, Alabama

Device for Starting Race-Horses

Specification Forming Part of Letters Patent No. 543,762, Dated July 30, 1895.

Application filed October 29, 1894. Serial No. 527,189. (No Model)

To all whom it may concern:

Be it known that I, James T. Andrew, of Montgomery, in the county of Montgomery and State of Alabama, have invented a new and Improved Device for Starting Race-Horses, of which the following is a full, clear, and exact description.

My invention relates to a device for starting race-horses, and it has for its object to provide one or a number of stalls, each stall being adapted to accommodate a horse, and to provide means whereby the stalls may be thrown open simultaneously, and whereby further the horses confined therein will be urged to depart upon the opening of the gates.

Another object of the invention is to provide a device of the above-described character which may be conveniently handled on a race-track and be readily taken out of the way when not required.

The invention consists in the novel construction and combination of the several parts, as will be hereinafter fully set forth and pointed out in the claims.

Reference is to be had to the accompanying drawings, forming a part of this specification, in which similar figures and letters of reference indicate corresponding parts in all the views.

Figure 1 is a front elevation of the device. Fig. 2 is a plan view thereof, a portion of the frame being in section. Fig. 3 is a transverse section, taken substantially on the line 3 3 of Fig. 2, and Fig. 4 is a horizontal section through the front portion of one of the stalls, illustrating the front gate of the stall in its lower position, the section being taken on the line 4 4 in Fig. 1.

In carrying out the invention one or a number of stalls A may be employed in the construction of the device, and the stalls may be built to be operated singly, in sections, or as a whole, the device, as shown in the drawings, being provided with a mechanism for simultaneously opening all of the stalls.

The framework of the series of stalls is preferably constructed of metal beams, either angled or channeled, but they may be constructed of hard wood if desired. The said frame comprises a series of front uprights 10, which are provided at the bottom with wheels 11, ordinarily of the caster type, and a top cross-bar 12, while the rear portion of the frame consists of a number of standards 13, corresponding to the number in front and connected at the top by a cross-bar 13^a, and a partition 14 is made to extend from each rear standard to its corresponding front standard, the said partitions constituting the sides of the stalls. The sides of the stalls may be padded in any approved manner, but in every event it is desirable that the padding should be placed in the front portions of the stalls, as shown in Figs. 2, 3, and 4 at the sides, in order that the horses may not see one another, and furthermore in order that the rider of a horse shall not become injured should the animal shy upon or before leaving the stall. The padded sections of the stalls are designated in the drawings as 15.

The animals are made to enter the stalls from the rear and are prevented from leaving them at this point ordinarily by closing the rear of the stalls by bars 16, hinged to the framing and provided with means for locking a bar in a closed position, the bar being so placed as to prevent an animal backing out from a stall when the bar is closed. A box 17 is placed against one rear standard 13 in each stall, the said box being partially open at one side in order that it may receive a weight 18, angular in cross-section; but a different form of weight may be used, if desired. The angular weight, however, will run freely in the box and yet will not leave the same.

Over each box 17 a pulley 19 is secured upon the rear cross-bar 13^a of the frame, and a rope, chain, or cable 20 is attached to each weight and is carried over one of the friction or guide pulleys 19 to the front of the stall in which its weight is located and over another friction or guide

roller 21, preferably placed upon the top of the front cross-bar of the frame and about over the central portion of the stall. The rope, chain, or cable is then carried downward, as shown in Figs. 1 and 3, and attached, preferably, to the lower portion of the gate 22, held to slide in the front framing of the stall.

A spring 23 is attached to each gate and to an upper support, usually the front upper cross-bar, as is also shown in Figs. 1 and 3, in order that when the gate is relieved from the lock, holding it in a lower position the spring will assist the weight in drawing the gate rapidly upward. Each gate 22 is held to slide in ways 24, produced in the sides of the front standards 10, and these ways are back of the front face of the standards and are substantially T-shaped in cross-section. Consequently each gate is provided at each side with a continuous rib 25, substantially T-shaped in cross-section, adapted to travel in the said ways.

It will be understood that the front portion of the slideways 24 are open.

The gates 22 are adapted to be locked in such a position as to prevent the animal in the stall from leaving it until the gate is raised, and such a lock preferably consists of a lever 26, located upon one of the front standards 10 in a single stall and upon sundry of the intermediate standards when a series of stalls is used, as shown in Fig. 1. The lower end of this lever is normally held against the standards by means of a spring 27, and the said lower end of the lever is provided with two pins 28 or their equivalents, which are made to enter openings in the standards and extend into the slideways 24, as illustrated in Fig. 4. When the gate is in its lower position, the pins will be above the top of the gate, as shown in the same figure.

Links 29 are employed to connect the upper or spring-controlled ends of the releasing-levers 26 with crank-arms 29ª formed upon a rock-shaft 30, journaled usually upon the inner face of the upper front cross-bar 12 of the frame; and this shaft is provided at the outer end with a hand-lever 31, or its equivalent, whereby it may be rocked.

The device may be rolled upon and off of the race-track by placing its wheels 11 upon suitably-formed tracks, or, as illustrated in the drawings, an extra standard 32 may be hinged to one of the front end standards 10, and in this event the extra or hinged standard 32 is made to carry a

plate 33, having sliding movement on the standard and held in any desired position by means of set-screws 34. The lower end of this plate or bar is sharpened, and its top is flanged outward, in order that when the screws 34 are loosened the plate or bar may be driven into the ground, and then the set-screws are tightened. It is now evident that if the frame is in the position shown in Fig. 1, in which it is supposed to be facing the track, and the device is no longer required, the entire frame may be turned around the post or extra standard 32 as upon a pivot, and be readily taken out of the way—that is, to one side of the track.

It is necessary that the horses should be compelled or urged to leave the stalls simultaneously. This is automatically accomplished by pivoting upon the back bar 16 of each stall a rod 35, of sufficient length when brought to a horizontal position, to strike the horse at the back. This rod may be made to carry a whip, if necessary, and is held in an upright position through the medium of a spring 36. The lower end of the rod is provided with a crank-arm 35^a, which extends into a slideway or box 17 for the weight, and as the weight falls when the gate is raised the weight will strike the crank-arm 35^a and carry the rod 35 inward to a substantially horizontal position, causing it to strike the horse with more or less force. A rubber cushion 37 is placed in the bottom of each weight-box 17.

In operation, the horses having been placed in the stalls and the front gates carried downward to their lower positions, when it is desired to start the horses the rock-shaft 30 is manipulated to draw the pins of the releasing-levers 26 from out of the slideways of the front gates, whereupon the springs 23 and the weights 18 connected with the gates will cause them to rise simultaneously to such a height that the horse and its rider may readily pass out. At the same instant each animal will be struck from behind by the striking-arm 35, and consequently the horses will leave the stalls as rapidly as in their power and at the same instant.

Having thus described my invention, I claim as new and desire to secure by Letters Patent—

1. A device for starting race horses, the same consisting of a stall provided with front and rear standards, a gate adapted to slide vertically in the said front standards, a

lever fulcrumed upon one of said front standards and normally holding the gate in a closed or lower position, means for raising said gate when released from the lever, a rock shaft provided with a crank arm, a link connecting the upper end of the lever with the crank arm, and means for rocking the said shaft, substantially as shown and described.

2. A device for starting race horses, the same consisting of a plurality of stalls provided with front standards, gates held to slide vertically in the front standards, levers fulcrumed upon the front standards between adjoining stalls, each lever being provided with projections at its lower end to engage the gates of two adjoining stalls when in their lower position, means for raising the gates when released from the levers and a trip device adapted to move the said levers simultaneously and release the gates, substantially as shown and described.

3. A device for starting race horses, the same consisting of a stall provided with a sliding front gate, a latch normally holding the gate in a closed position, a trip adapted to release the gate from the said latch, means for opening the gate when released from the latch, and a striker arm operated simultaneously with the opening of the gate, as and for the purpose set forth.

4. A device for starting race horses, the same consisting of a stall, a gate having sliding movement and adapted to close the forward end of the stall, a weight serving to elevate the gate, a latch acting to hold the gate in its lower or closed position, means, substantially as shown and described, for releasing the gate from the latch, and a striker arm located at the rear of the stall and operated by the said weight simultaneously with the raising or opening of the gate, as and for the purpose set forth.

5. In a device for starting race horses, the combination, with a stall and front and rear standards projected beyond the top of the stall, one of the rear standards being provided with a box, and the front standards with slideways angular in cross section, of a gate having angular ribs entering the front slideways of the stall, a releasing lever adapted to normally hold the gate in a lowered position, a trip device adapted to disengage the releasing lever from

engagement with the gate, a weight held to slide in the said box at the rear of the stall, a striker arm adapted to deliver a blow upon the animal in the stall and operated by the said weight as the weight fals in opening the gate, and a cable connecting the said weight with the gate, as and for the purpose set forth.

6. In a device for starting race horses, the combination, with a stall and front and rear standards projecting upwardly therefrom, a box being formed upon one of the rear standards, the front standards being formed with slideways angular in cross section, of a gate having ribs extending into the slide-ways at the front of the stall, a weight held to travel in the rear box, a connection between the gate and weight, substantially as described, a releasing lever fulcrumed upon one of the front standards and provided with pins adapted to enter the slideway and extending over the top of the gate when in its lowered position, a trip device by means of which the releasing lever is operated, and a striker arm adapted to deliver a blow upon the horse in the stall, simultaneously with the raising of the gate, the said striker arm being spring-controlled and provided with a member extending into the path of the weight, whereby the arm is carried inward against the resistance of its spring, as and for the purpose specified.

James T. Andre V.

Witnesses: J. W. Parsons, H. G. Thompson.

DEFENDANTS' EXHIBIT "S"

ESCUDE PATENT NO. 731,347

JUNE 16, 1903

No. 731,347. PATENTED JUNE 16, 1903.

A. J. ESCUDÉ.

RACE STARTER.

APPLICATION FILED MAR. 9, 1903.

NO MODEL. 2 SHEETS—SHEET 1.

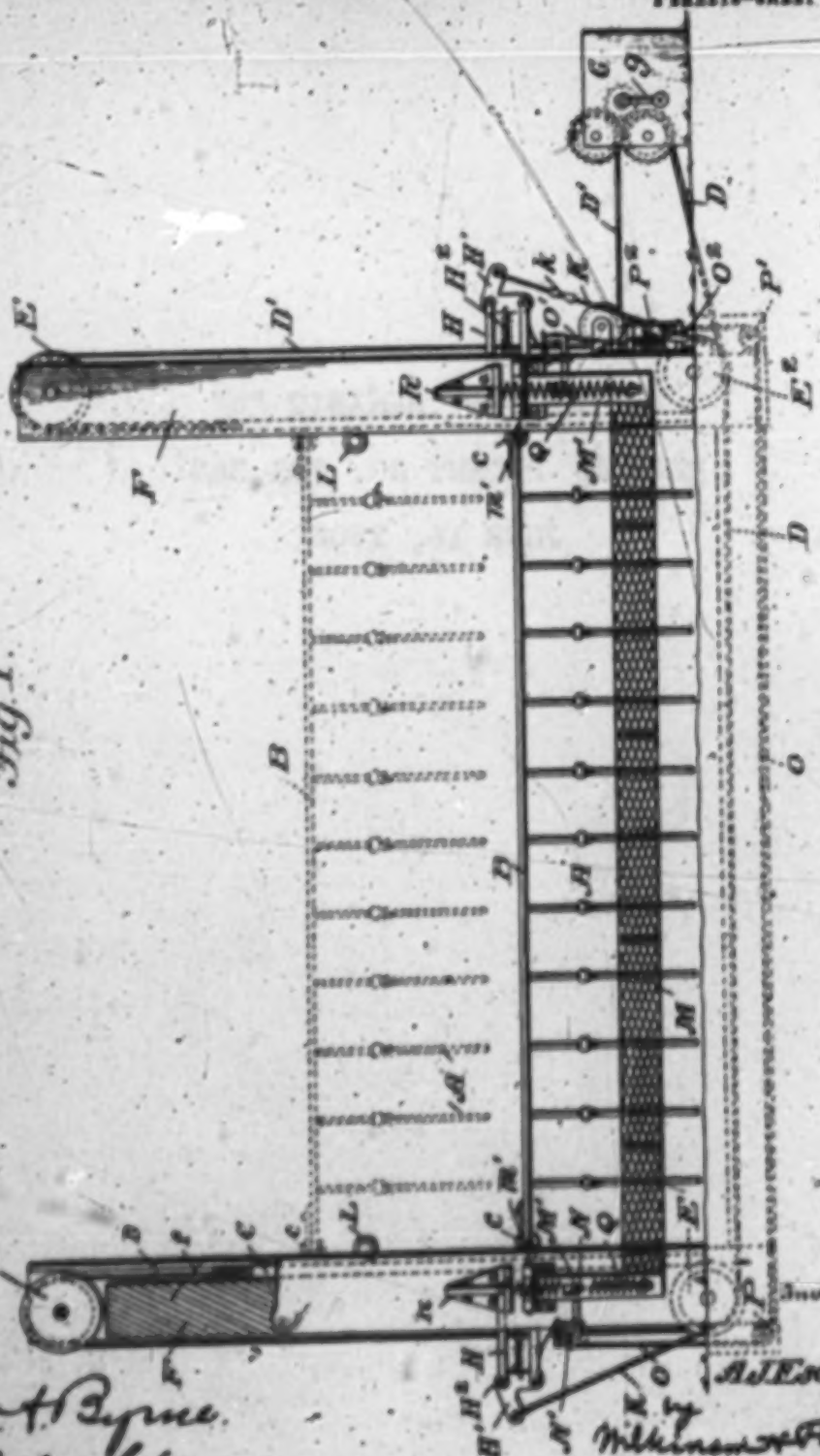


Fig. 1.

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Inventor:
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No. 731,347. PATENTED JUNE 16, 1903.

A. J. ESCUDÉ.

RACE STARTER.

APPLICATION FILED MAR. 2, 1903.

NO MODEL. 2 SHEETS—SHEET 2.

Fig. 1.

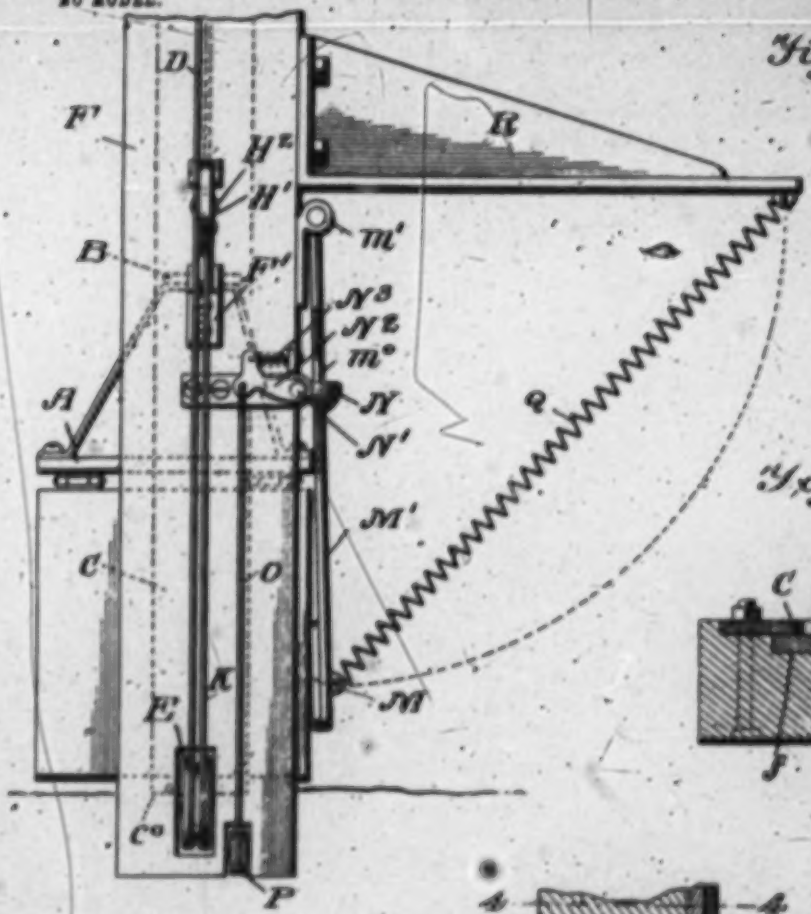


Fig. 2.

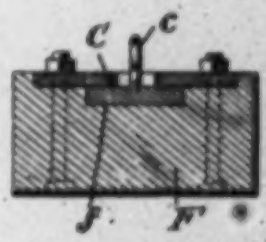
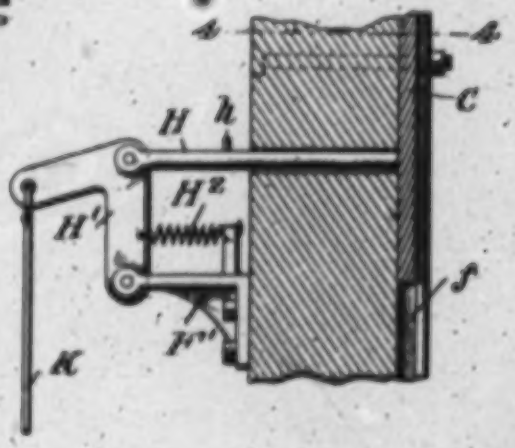


Fig. 3.



Witnesses
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By Williamson & Fisher,
Attorneys

No. 731,347. Patented June 16, 1903

United States Patent Office

Alphonse Jules Escudé, of New Orleans, Louisiana

Race-Starter

Specification Forming Part of Letters Patent No. 731,347, Dated June 16, 1903

Application Filed March 2, 1903. Serial No. 145,807. (No Model)

To all whom it may concern:

Be it known that I, Alphonse Jules Escudé, a citizen of the United States, residing at New Orleans, in the parish of Orleans and State of Louisiana, have invented certain new and useful Improvements in Race-Starters; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

My invention relates to improvements in starters for race-tracks. In practice at race-tracks there is great difficulty in getting the horses started together, and numerous devices have been employed to secure the object in view, but so far as I am aware without complete success. My invention is intended to obviate various difficulties experienced in practice in this connection, and it will be understood by reference to the accompanying drawings, in which the same parts are indicated by the same letters throughout the several views.

Figure 1 is a front view of my improved apparatus, parts being broken away. Fig. 2 is an end view, on an enlarged scale, showing parts of the apparatus illustrated in Fig. 1. Fig. 3 shows the mechanism for keeping the counterweights connected to the stalls from dropping, and Fig. 4 shows a cross-section along the line 4-4 of Fig. 3.

A represents a series of stalls suspended from a beam B, which is connected by eyes *c* to the weights C, which weights travel in guide-grooves *f* (see Figs. 3 and 4) in the frame F. These weights are suspended by wire rope D and

D'. The rope D passes over the pulley E at the top of one end of the frame and then under the lower pulley E', thence underground beneath the track to the pulley E², whence it is led to the windlass G. The opposite weight is attached to the rope D', which passes over a corresponding pulley E and is led down to the windlass, so that turning the handle *g* will wind up both ropes D D' and will raise the stalls to the position indicated in dotted lines in Fig. 1. When the stalls are in this position, (indicated by the dotted lines,) the pin H (see Fig. 3) will be pressed forward by the spring H², connected to the bell-crank lever H' and to the bracket F', and this pin will pass under the lower end of the weight C and will hold the said weight, and with it the stalls, in the elevated position until released, as will hereinafter be described. A stop *h* may be provided on top of the pin H to prevent it from being forced in too far. There is also a pin H in the bell-crank lever H' on the other side of each of the end frames F, and these two bell-crank levers are connected together by a cord K, kept at the required tension by a turnbuckle *k*, or they may be knotted together at the required tension.

Assuming that the stalls are in the elevated position indicated by the dotted lines in Fig. 1, simply pulling outward on this cord K will cause both bell-crank levers H' to pull out the pins H far enough to allow the weights C, and with them the stalls, to drop to the lower position. (Indicated by the full lines in Fig. 1.)

Should it be desired not to use the stalls, the ends of the beam B may be secured to eyes L, provided in the two end frames F.

M represents a net, which is stretched across the track in front of the stalls. The net is carried by the arms M', each pivoted at *m'* to one of the end frames. These arms are slotted at *m°* to receive the catches N, and these catches are, in effect, crank-arms on the shaft N', which shaft carries the crank-arm N², normally drawn upward by the spring N³. These crank-arms may be drawn down by the cords O and O', respectively, which are both connected to the handle O², The cord O passes under a pulley P and thence underground beneath the track to another pulley P' and thence upward to a third pulley P². The opposite cord O' is connected to the corresponding crank-arm and is led directly down to a pulley similar to the pulley P² and is connected

to the handle O^2. By pulling on this handle the catch N is raised up in the slot M^6, becoming disengaged from the arm M', and the latter is drawn upward by means of the spring Q, connected to the bracket R. Thus when these catches N are released the net automatically swings upward, thus clearing the track.

In practice the parts are in the position indicated in full lines in Fig. 1, and the horses are drawn up in the stalls A. When it is desired to make a start, the handle O^2 is pulled on, releasing the net and clearing the track. The net will remain in the lifted position until it is pulled down by hand or in any other convenient way.

In order to remove the stalls from the path of the horses on the first stretch, it is only necessary to wind up on the handle *g* of the windlass G, when the stalls will be raised to the position indicated in dotted lines in Fig. 1, where they will be clear of the heads of the jockies. As soon as the stalls are raised to the desired height the pins H will snap under the ends of the weights C and will thus lock the stalls in the elevated position until the cord K be pulled on, when the stalls will drop to the initial position ready for another start.

It will be evident that posts may be used in place of the end frames and that wide variations may be made in the construction of the frame. It will also be evident that the stall-partitions may be hinged to or suspended from the beam B in any desired way.

It will be obvious that various modifications might be made in the herein-described apparatus without departing from the spirit of my invention.

Having thus described my invention, what I claim, and desire to secure by Letters Patent of the United States, is—

1. In an apparatus of the character described, the combination with an end frame at each side of the track and weights sliding in said end frames, of a beam connecting said weights, and a plurality of stall-partitions suspended from said beam, and means for raising and lowering said beam, substantially as and for the purposes described.

2. In an apparatus of the character described, the combination with an end frame at each side of the track and weights sliding in said end frames, of a beam connecting said weights, a plurality of stall-partitions suspended from

said beam, spring-catches supporting said weights and with them said beam in the elevated position, means for simultaneously tripping said catches and allowing said weights to fall, and means for simultaneously hoisting said weights, substantially as described.

3. In an apparatus of the character described, the combination with an end frame at each side of the track and weights sliding in said end frames, of a beam connecting said weights, a plurality of stall-partitions suspended from said beam, spring-catches supporting said weights and with them said beam in the elevated position, means for simultaneously tripping said catches and allowing said weights to fall, and a windlass with ropes and pulleys connected thereto for simultaneously hoisting said weights and stall-partitions, substantially as described.

4. In an apparatus of the character described, the combination with the end frames, one at each side of the track, and the slotted arms pivoted thereto, of a net attached to the lower ends of said arms and spanning the track, springs normally tending to swing said arms upward about their pivots, pivoted spring-catches engaging in the slots in said arms and holding said arms in the lower position against the action of said springs, and means for simultaneously tripping said catches and thus releasing said arms, allowing the net to swing upward, substantially as described.

5. An apparatus of the character described, comprising an end frame at each side of the track and weights sliding in said end frames, a beam connecting said weights, and a plurality of stall-partitions suspended from said beam, and means for raising and lowering said beam, arms pivoted to the end frames, a net attached to the lower ends of said arms and spanning the track, springs normally tending to swing said arms upward about their pivots, spring-catches for holding said arms in the lower position against the action of said springs, and a cord connecting said spring-catches and passing over suitable rollers, whereby said spring-catches may be simultaneously released, substantially as and for the purposes described.

6. An apparatus of the character described, comprising an end frame at each side of the track and weights sliding in said end frames, a beam connecting said weights, a plu-

rality of stall-partitions suspended from said beam, spring-catches supporting said weights and with them said beam in the elevated position, means for simultaneously tripping said catches and allowing said weights to fall, means for hoisting said weights, arms pivoted to the end frames, a net attached to the lower ends of said arms and spanning the track, springs normally tending to swing said arms upward about their pivots, spring-catches for holding said arms in the lower position against the action of said springs, and a cord connecting said spring-catches and passing over suitable rollers, whereby said spring-catches may be simultaneously released, substantially as and for the purposes described.

7. An apparatus of the character described, comprising an end frame at each side of the track and weights sliding in said end frames, a beam connecting said weights, a plurality of stall-partitions suspended from said beam, spring-catches supporting said weights and with them said beam in the elevated position, means for simultaneously tripping said catches and allowing said weights to fall, a windlass with ropes and pulleys connected thereto for simultaneously hoisting said weights and stall-partitions, arms pivoted to the end frames, a net attached to the lower ends of said arms and spanning the track, springs normally tending to swing said arms upward about their pivots, spring-catches for holding said arms in the lower position against the action of said springs, and a cord connecting said spring-catches and passing over suitable rollers, whereby said spring-catches may be simultaneously released, substantially as and for the purposes described.

In testimony whereof I affix my signature in presence of two witnesses.

Alphonse Jules Escudé.

Witnesses: Henry Joseph Gassié, Hubert Marion Ansley.

DEFENDANTS' EXHIBIT "T"

STITZER PATENT NO. 868,029

OCTOBER 15, 1907.

No. 868,029. PATENTED OCT. 15, 1907.

D. STITZER.

RACE STARTING APPARATUS.

APPLICATION FILED JAN. 30, 1907.

2 SHEETS—SHEET 1.

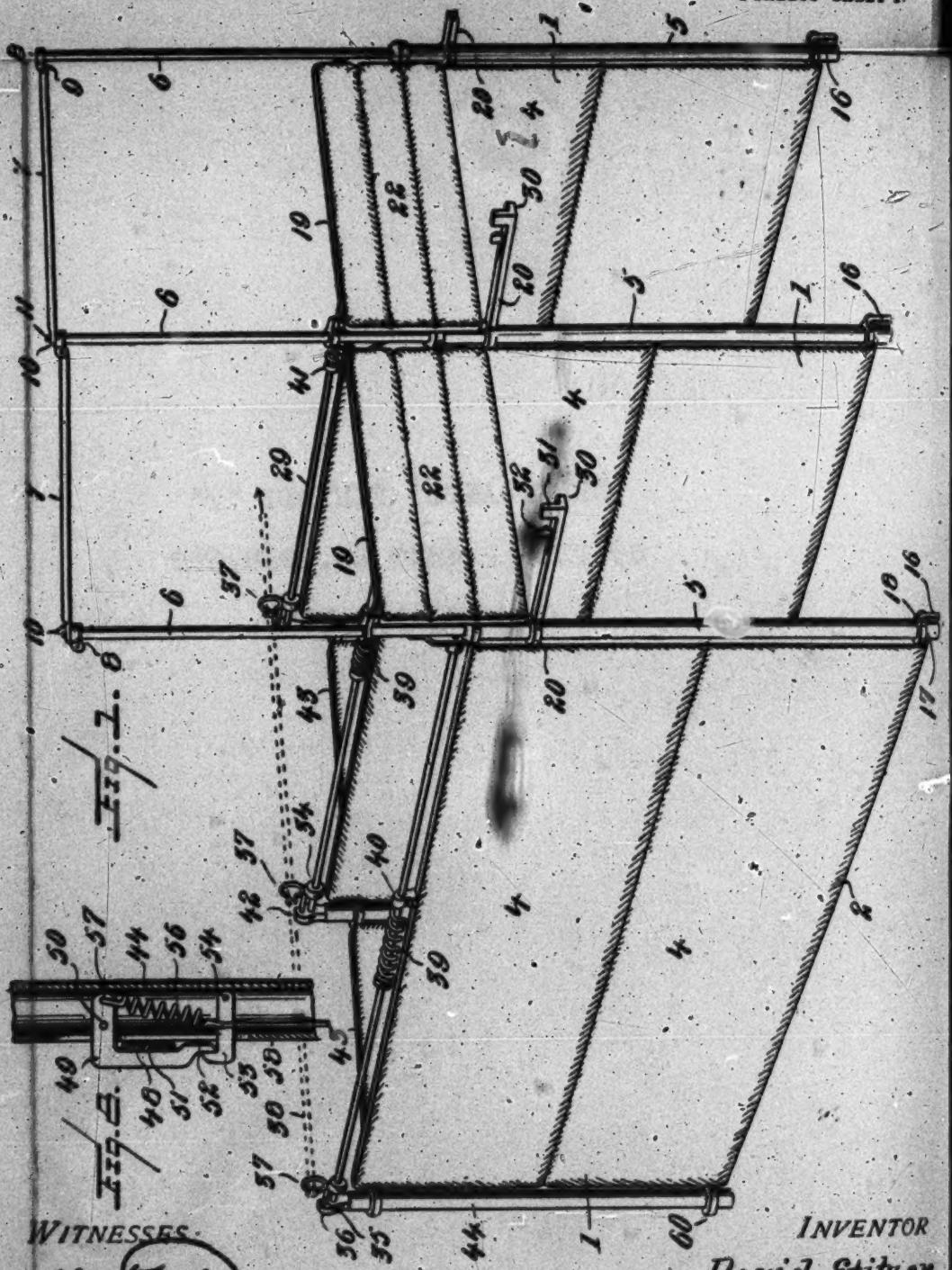

Fig. 1.

Fig. 2.

WITNESSES.

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Alfred T. Page.

INVENTOR

David Stitzer.

BY E. B. Stocking

Attorney

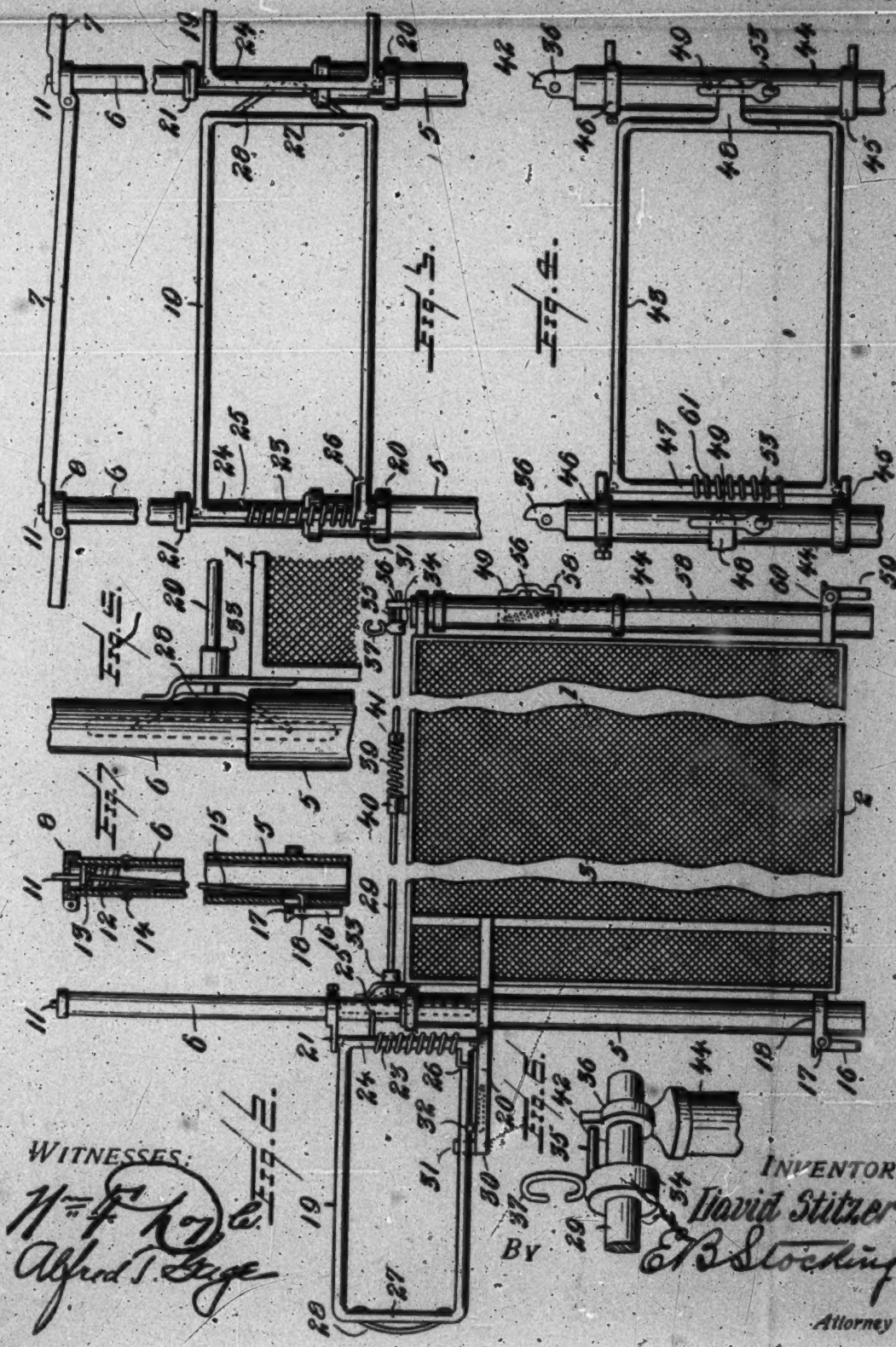
No. 868,029. PATENTED OCT. 15, 1907.

D. STITZER.

RACE STARTING APPARATUS.

APPLICATION FILED JAN. 30, 1907.

2 SHEETS—SHEET 2.



WITNESSES:

Alfred J. Boyce

INVENTOR

David Stitzer

By E. B. Stocking

Attorney

United States Patent Office

David Stitzer, of Lexington, Kentucky, Assignor of One-Half to William R. Hutchison, of Lexington, Kentucky.

Race-Starting Apparatus

No. 868,029. Specification of Letters Patent. Patented Oct. 15, 1907

Application filed January 30, 1907. Serial No. 354,896

To all whom it may concern:

Be it known that I, David Stitzer, a citizen of the United States, residing at Lexington, in the county of Fayette, State of Kentucky, have invented certain new and useful Improvements in Race-Starting Apparatus, of which the following is a specification, reference being had therein to the accompanying drawing.

This invention relates to a race starting apparatus, and particularly to a device where the barriers for the horses are simultaneously released.

The invention has for an object to provide a plurality of stalls each provided with a barrier at one end which are adapted to be automatically opened and to be simultaneously released by a unitary device so as to effect an even starting at a given signal.

A further object of the invention is to provide an improved construction of such an apparatus so as to permit the ready removal thereof from the race track after the starting so that in subsequent laps there will be no obstruction to the horses in passing a given starting point.

Other and further objects and advantages of the invention will be hereinafter set forth and the novel features thereof defined by the appended claims.

In the drawings: Figure 1 is a perspective of the apparatus in position for use; Fig. 2 is a detail elevation of one of the stall walls with the barrier in opened position; Fig. 3 is a front elevation of the frame of this barrier; Fig. 4 is a similar view of the rear gate of the stall; Fig. 5 is an enlarged detail elevation of the retaining means for the barrier. Fig. 6 is a detail perspective of the releasing device for the barrier; Fig. 7 is a detail vertical section

of the retaining and releasing device for the cross bar between the stall posts, and Fig. 8 is a detail section of the retaining device for the rear gates of the stalls.

Like numerals refer to like parts in the several views of the drawings.

This invention comprises a plurality of stalls disposed in alinement with each other and composed of the side walls 1 which preferably consist of the frame 2 covered with a reticulated material 3, as shown in Fig. 2, such material being covered with the padding 4 or other surface to protect the animal from injury by contact therewith, as shown in Fig. 1. These side walls are supported by front posts 5 which rest at their lower ends upon the ground and are provided at their tops with extensions 6 each carrying a cross bar 7 by which the stalls are connected together, and retained in position when the barriers and gates are opened. These cross bars may be mounted in any desired manner, for instance by means of the clamps 8 embracing one of the extensions 6 and provided with a pivot 9 upon which the cross bar is mounted the opposite end 10 of the bar being apertured and adapted to receive the bolt 11 which extends upward from the extension 6 of the post, as shown in Fig. 7. This bolt is normally held in elevated position by means of the spring 12 extending between the head 13 of the bolt and the fixed projection 14 of the extension. When it is desired to remove the sides of the stalls, the bolt may be retracted by means of the connection 15 extending to the operating lever 16 at the base of the standard or post 5. This lever is pivoted at 17 in a sleeve 18 surrounding the post, and when swung into a horizontal position retracts the bolt 11.

Pivotally mounted upon the post is a barrier frame 19 which is mounted by means of the bracket 20 at the lower portion thereof and the pivoting sleeve 21 which is secured at the upper portion thereof. This barrier may be padded with any suitable material for protection, as shown at 22 in Fig. 1. The barrier is normally retained under tension by means of the spring 23 surrounding the portion 24 of its frame and bearing at its end 25 against the post, while its opposite end 26 engages the frame of the barrier. The frame 27 of this barrier is provided with a retaining means, for instance, a loop 28 which is adapted to be engaged

by a locking rod 29, as shown in Fig. 5. When this barrier is in its open position, as shown in Fig. 2, it is retained by means of an extension 30 from the bracket 20 which carries a stop lug 31 to engage the frame of the barrier, and a spring held latch 32 mounted in said extension to be depressed by the lower frame of the barrier in its passage thereover, and in its retraction to engage and hold the barrier in open position to prevent rebound against the horse when the barrier is opened.

The rod 29 by which the barrier is released is slidably mounted at its front in a bearing 33 carried by the side walls of the stall, and at its rear end by a similar bearing 36 through which it extends. The collar 34 is provided with a projecting pin 35 which bears upon the bearing 36, and the collar is provided with an eye 37 which is adapted to receive the operating cord or cable 38 having connections or projections to engage and simultaneously operate and release the series of rods by a rotative movement thereof and extending to a point at one side of the apparatus. For the purpose of automatically retracting each rod a spring 39 is mounted thereon and extends between the bearing 40 upon the upper surface of the side wall and a stop 41 secured to the rod. By reference to Fig 6 it will be seen that a rotative movement of the rod 29 will carry the pin 35 out of engagement with the projection 42 upon the bearing 36 so as to permit a longitudinal movement of the rod 29 which when it is free from engagement with the barrier permits the same to be automatically opened.

At the rear of the stalls gates 43 are provided and padded similarly to the side walls and barriers, said gates being pivotally mounted upon the rear posts 44 which rest upon the ground, by means of the bearing collars 45 at their lower portion and the adjustably mounted collars 46 at their upper ends which engage the side bar 47 of the gate to pivotally mount the same. This gate is provided with the apertured locking plate 48 which, as shown in Fig. 8, is adapted to be held by a latching lever 49 pivotally mounted at 50 upon or within the rear post 44 and provided with a projection 51 to enter the aperture in said plate. The lower end of this lever is formed with a retaining portion 52 adapted to engage the hook 53 which is pivoted at 54 on the post and held in engagement with the portion 52 by

means of the coiled spring 56 extending therefrom to the inner end 57 of the lever 49. When it is desired to release the parts the hook 53 is withdrawn by means of the connection 58 extending downwardly to the operating lever 59 pivotally mounted at 60 upon the rear post 44. When this lever is turned into a horizontal position the hook 53 is withdrawn from the latch and the spring 56 throws the same outward so as to immediately release the plate 48 and permit the rear gate to be automatically thrown open by the spring 61 mounted thereon and engaging the post 44 to place the gate under tension.

From the foregoing description the construction and general operation of the invention will be apparent, and it will be observed that with the apparatus assembled, as shown in Fig. 1, any desired number of stalls may be employed depending upon the number of horses to be started in the race, the rear gates thereof being left open so that the horse may enter. The rear gate is then closed and at the time of starting the rods controlling the barriers simultaneously operated so that said barriers are automatically thrown open. The apparatus may then be removed entirely from the track by throwing upward the levers controlling the bolts for the cross bars at the top of the front standards, and also the controlling levers for the rear gates which when open leave the sides free to be independently removed by the attendants without difficulty or delay so that in the next lap of the race the track is entirely free from obstruction.

It will also be observed that both the barriers and gates are carried by the stall sides so that they may be assembled in any desired number, and the invention presents a simplicity of construction and operation which avoids any difficulty in assembling or using the same.

Having thus described my invention and set forth its merits what I claim and desire to secure by Letters Patent is:

1. In a device of the class described, a plurality of side walls forming parallel stalls, barriers pivotally mounted upon said walls, and means for simultaneously releasing and opening said barriers.

2. In a device of the class described, a plurality of side walls forming parallel stalls, barriers pivotally mounted upon said walls, means for simultaneously releasing and opening said barriers, and means for retaining said barriers against rebound when in opened position.

3. In a device of the class described, a plurality of independent side walls forming parallel stalls, barriers movably mounted upon said walls, means for simultaneously releasing and opening said barriers, and cross bars extending between the posts of said sides for detachably connecting the same laterally.

4. In a device of the class described, a plurality of side walls forming parallel stalls, barriers movably mounted upon said walls, means for simultaneously releasing and opening said barriers, cross bars extending between the posts of said sides for connecting the same laterally, and means disposed at the lower portion of said posts for releasing the same.

5. In a device of the class described, a plurality of side walls forming parallel stalls, barriers pivotally mounted upon said walls, means for simultaneously releasing and opening said barriers, and rear gates pivotally mounted upon said sides and provided with means for automatically opening said gates.

6. In a device of the class described, a plurality of side walls forming parallel stalls, barriers movably mounted upon said walls, means for simultaneously releasing and opening said barriers, rear gates movably mounted upon said sides and means for releasing and automatically opening said gates.

7. In a device of the class described, side walls provided with front and rear posts, barriers pivotally mounted upon a front post, springs for normally retaining each barrier in open position, means for retaining each barrier in closed position under tension, and means for simultaneously operating the retaining means.

8. In a device of the class described, side walls provided with front and rear posts, barriers pivotally mounted upon a front post, means for holding each barrier in closed po-

sition under tension, means for simultaneously operating said holding means, a bracket provided with a stop lug to engage each barrier, and a latch adapted to automatically engage each barrier and hold it in open position.

9. In a device of the class described, side walls provided with front and rear posts, an extension upward from the front post, a bolt slidably mounted in said extension to project from the upper end thereof, a connection extending downward from said bolt, and a cross bar pivoted upon one extension and provided with an apertured free end to engage said bolt.

10. In a device of the class described, side walls provided with posts at opposite ends, a pivotally mounted barrier upon one of said posts, a locking rod disposed to engage and retain said barrier in closed position, a spring adapted to move said rod longitudinally, a pin carried by said rod to engage a fixed bearing, and means for moving said rod to throw the pin out of engagement with its bearing.

11. In a device of the class described, side walls provided with posts at their opposite ends, a pivotally mounted barrier upon one of said posts, a locking rod disposed to engage and retain said barrier in closed position, a spring adapted to move said rod longitudinally, a collar carried by said rod and provided with a pin extending parallel therewith, a fixed end bearing for said rod provided with a projection to normally engage said pin, and an eye carried by said collar by which said pin may be moved out of engagement with said projection to permit longitudinal movement of said rod.

12. In a device of the class described, side walls provided with front and rear posts, a barrier carried by the front post, a gate pivotally mounted upon the rear post and provided with a locking plate, a pivoted lever adapted to engage said plate, a hook to retain said lever in locked position, and an operating device extending from said hook to release the same from said lever.

13. In a device of the class described, side walls provided with front and rear posts, a barrier carried by the front post, a gate pivotally mounted upon the rear post and provided with a locking plate, a pivoted lever adapted

to engage said plate, a hook to retain said lever in locked position, a tension spring extending between the rear end of said lever and said book, and an operating lever pivotally mounted upon the rear post and connected to said hook to release the same from said lever.

14. In a device of the class described, side walls provided with front and rear posts, a barrier carried by the front post, a gate pivotally mounted on the rear post and provided with a locking plate, a spring mounted upon said gate and engaging the post to automatically open the gate, a pivoted lever adapted to engage said plate, a hook to retain said lever in locked position, a tension spring extending between the rear end of said lever and said hook, and an operating lever pivotally mounted upon the rear post and connected to said hook to release the same from said lever.

15. In a device of the class described, side walls, a barrier carried thereby, a pivoting bracket at the lower portion thereof, and a pivoting sleeve at the upper portion adapted to be adjusted upon the supporting member of said barrier.

16. In a device of the class described, side walls provided with front and rear posts, a barrier mounted upon one of the front posts and provided with a retaining loop at its free end, a rod to engage said loop, and means for reciprocating said rod.

17. In a device of the class described, side walls provided with front and rear posts, a barrier mounted upon one of the fornt posts and provided with a retaining loop at its free end, a rod to engage said loop, a bearing upon said side wall for said rod, a collar secured to said rod, a spring extending between said bearing and collar, and a retaining device for normally retaining said spring under tension.

18. In a device of the class described, a plurality of side walls forming independent stalls each provided with a pivoted spring controlled barrier thereon adapted to engage an adjacent wall.

19. In a device of the class described, a plurality of independent parallel side walls forming a stall, an automatically opening barrier pivotally mounted upon one wall and

extending between the front portions of said walls, means upon the adjacent wall for retaining and releasing said barrier, and means for operating said releasing means from a point removed therefrom.

20. In a device of the class described, a plurality of independent parallel side walls forming a stall, an automatically opening barrier pivotally mounted upon one wall and extending between the front portions of said walls, means upon the adjacent wall for retaining and releasing said barrier, means for operating said releasing means from a point removed therefrom, and an automatically opened end gate pivotally mounted on one of said walls to engage the opposite wall and close the rear of the stall.

In testimony whereof, I affix my signature in presence of two witnesses.

David Stitzer.

Witnesses: Horace Geers, M. C. Gibbins.

DEFENDANTS' EXHIBIT "U"

STEDEKER PATENT NO. 647,166

APRIL 10, 1900.

No. 647,166. Patented Apr. 10, 1900.

S. STEDEKER.

STARTING DEVICE FOR RACE COURSES.

(Application filed Dec. 20, 1899.)

(No Model.) 3 Sheets—Sheet 1.

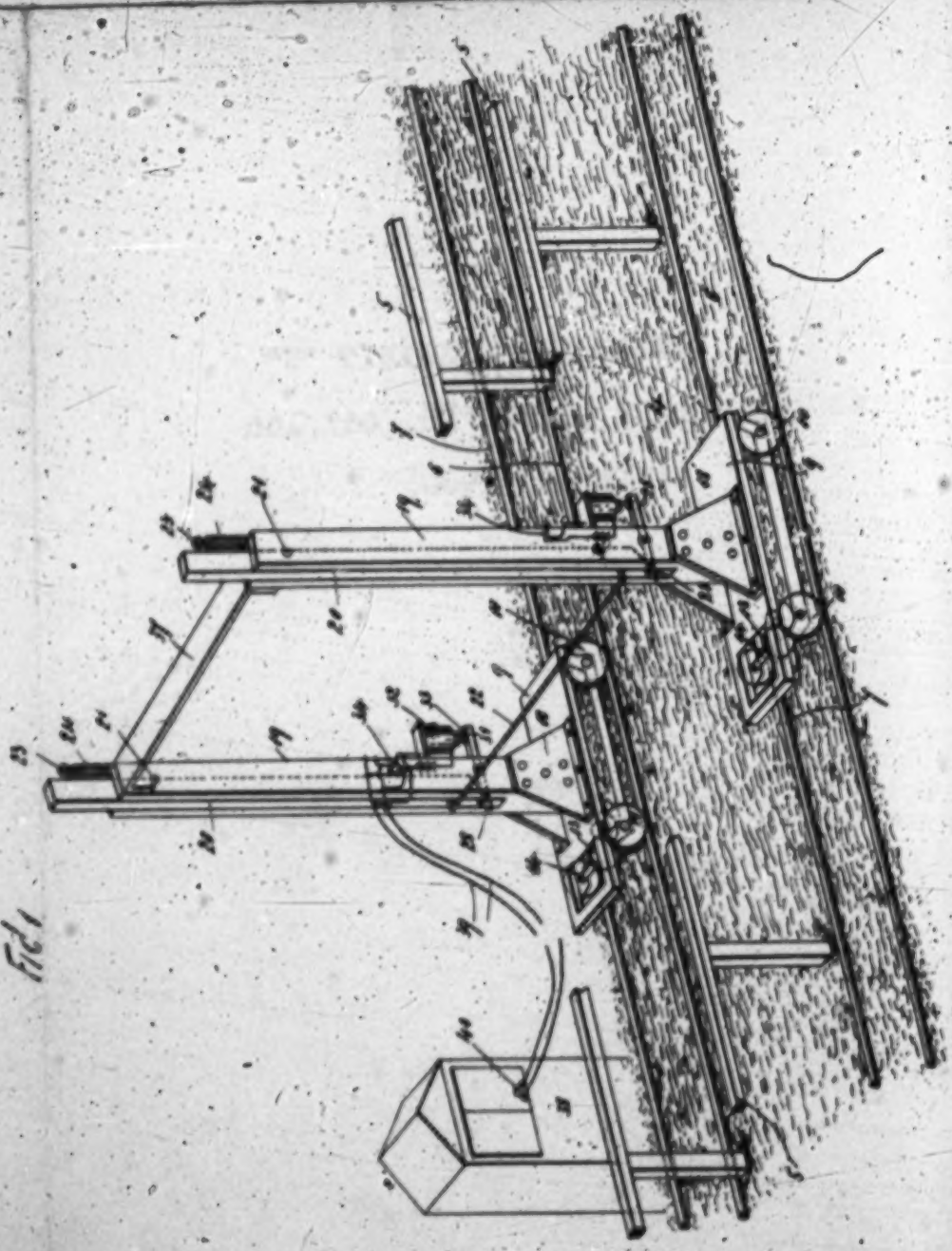


Fig. 1

WITNESSES

INVENTOR

Samuel Stedeker

BY

ATTORNEYS

No. 647,166. Patented Apr. 10, 1900.

S. STEDEKER.

STARTING DEVICE FOR RACE COURSES.

(No Model.) (Application filed Dec. 20, 1899.)

3 Sheets—Sheet 2

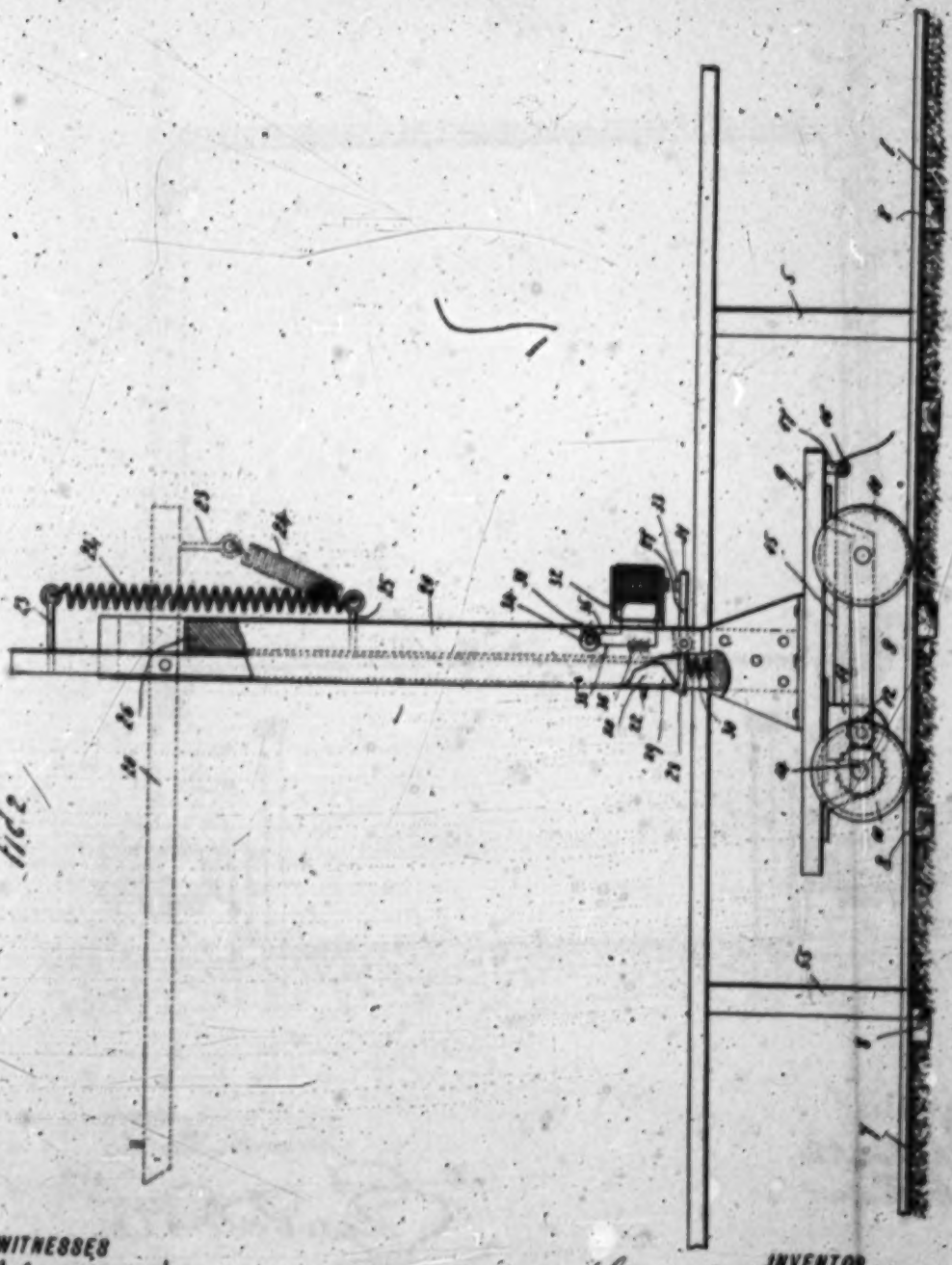


Fig. 2.

WITNESSES

Jos. Buckler,

L. C. Mann

INVENTOR

Samuel Stedeker

BY Edgar Tate & Co

ATTORNEYS

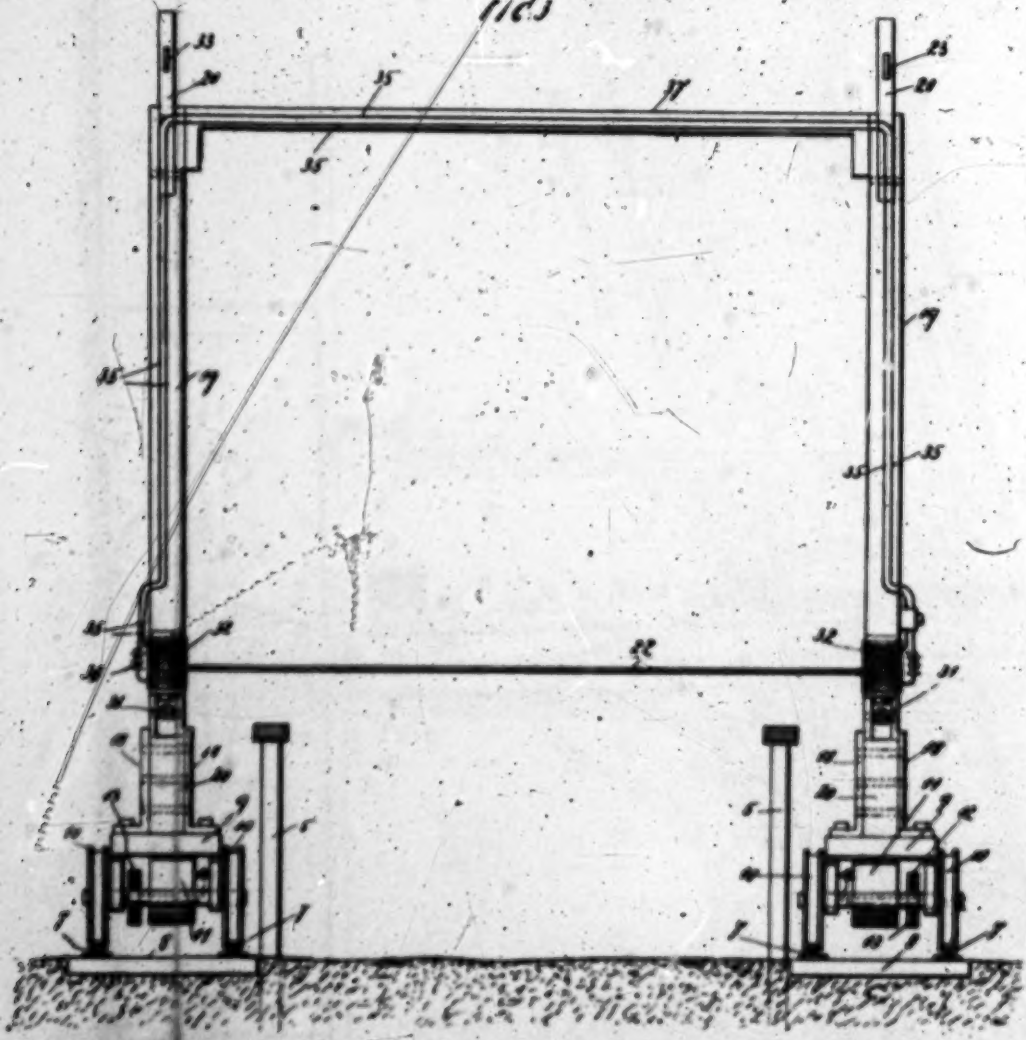
No. 647,166. Patented Apr. 10, 1900.

S. STEDEKER.

STARTING DEVICE FOR RACE COURSES.

(No Model.) (Application filed Dec. 20, 1899.) 3 Sheets—Sheet 3

Fig 3



WITNESSES

INVENTOR

Samuel Stedeker

BY

ATTORNEYS

United States Patent Office

Samuel Stedeker, of New York, N. Y.

Starting Device for Race-Courses

Specification Forming Part of Letters Patent No. 647,166, Dated April 10, 1900

Application Filed December 20, 1899. Seriai No. 740,972. (No Model)

To all whom it may concern:

Be it known that I, Samuel Stedeker, a citizen of the United States, residing at New York, in the county of New York and State of New York, have invented certain new and useful Improvements in Starting Devices for Race-Courses, of which the following is a full and complete specification, such as will enable those skilled in the art to which it appertains to make and use the same.

This invention relates to starting devices for race-courses whereby even starting of horses in a race may be facilitated; and the object thereof is to provide a device of this class whereby horses may be evenly started while walking, trotting, or running. With starting devices as at present constructed it is necessary to bring the starting horses to a standstill in front of the starting-gate and the starting-signal is given while the horses are at a standstill, which custom or practice causes an unfair disadvantage to certain horses which cannot get under way as quickly as others, although they may be faster when once in motion. A moving start brings all the horses to the starting-line with equal advantages, and the starting of the race thus becomes equitable to all the entries.

My invention consists in the construction and arrangement of parts hereinafter set forth.

In the accompanying drawings, forming part of this specification, in which like reference characters denote corresponding parts in the several views, Figure 1 is an isometric view of a portion of a race-track, at either side of which are arranged tracks upon which is mounted the movable starting-gate which comprises my invention. Fig. 2 is

a side elevation, partly in section, of the starting-gate shown in Fig. 1, the side rail of the race-track being shown in full lines and the road-bed of the starting-gate tracks in section and on an enlarged scale; and Fig. 3, a rear elevation of the starting-gate shown in Figs. 1 and 2, the tracks of the starting-gate, together with the road-bed thereof and the race-track, being transversely sectioned, the whole being also upon an enlarged scale, the spring 24 being omitted for purposes of clearness of illustration.

In the practice of my invention I provide at either side of a race-track 4, provided with the usual side rails 5 at either side thereof, a road-bed 6, provided with tracks or rails 7, similarly arranged to the tracks of railways and mounted upon sleepers 8, whereby a smooth running-surface is provided.

The tracks or rails 7 of the race-track 4 extend a predetermined distance at either side of the starting-line, preferably for a distance, say, of one hundred feet at the side of the starting-line upon which the horses approach the same and, say, fifty feet at the other side thereof. Mounted upon the rails 7 at either side of the race-track 4 is a truck 9, provided with wheels 10, by means of which it may be moved upon said tracks or rails, and said trucks are provided with motors 11, with which are operatively connected driving-gears 12, which mesh with gears 13, one of which is mounted upon one of the shafts 14, upon which one set of wheels 10 of each of the trucks 9 are carried.

The motor devices 11 preferably consist of electric motors and, as shown in Fig. 2, are provided with circuit-wires 15, which pass rearwardly of the trucks 9 and over wheels 16, supported by brackets 17. From the wheel 16 the circuit-wires extend to the source of electrical generation and are preferably arranged to be drawn along the road-beds 6 as the trucks move upon the tracks or rails 7. It is evident that, if desired, an overhead or underneath-ground trolley may be supplied for the trucks 9, whereby electric current may be passed through the motors 11, and the circuit-wire 16 thus dispensed with, although this arrangement and construction of current-feed device is not shown, being well known and the application thereof being readily perceived.

Each of the tracks 9 is provided with a base 18, to which is firmly secured the lower end of an upright 19, which is

preferably vertically grooved, as shown in Figs. 1 and 2, and in each of the uprights 19, at the upper end thereof, is pivoted a gate-arm 20 at 21, said gate-arms being connected at their outer ends by a tape or cord 22. The arms 20 project an appreciable distance above the tops of the uprights 19 in the position shown in Figs. 1 and 3, and connected with each of said upper ends by means of brackets 23 are coiled springs 24, which are connected at their lower ends by means of brackets 25 with the rear portions of the uprights 19, and the springs 24 exert a continuous tension upon the arms 20 to raise the lower ends thereof, together with the tape or cord 22, into the position shown in Fig. 2 in dotted lines, in which position they are maintained by a central web 26, which makes a portion of each of the uprights 19, and in engagement with the upper portion of which the upper portions of the arms 20 are brought upon elevation of the lower ends of said arms.

The lower portions of the uprights 19 have chambers rearwardly communicating with the upright grooves therein and are provided in said chambered portions with pivoted catch-arms 27, provided at their forward ends with catch-heads 28, which operate in connection with the lower ends 29 of the arms 20, which, as shown in the drawings, are beveled, whereby they may be readily engaged with the catch-heads 28. The catch-heads 28 are normally held in engagement with the beveled ends 29 of the arms 20 by coiled springs 30, which are imposed within the vertical grooves of the uprights 19 beneath said catch-heads.

Above the rearward end 31 of each of the catch-arms 27 is mounted an electromagnet 32, and said ends 31 are provided with armature devices 33, in connection with which said magnets operate. A circuit-closing device 34 is connected with one of the uprights 19, at one side thereof, and the terminals thereof are connected by circuit-wires 35 with the electromagnet 32, which is connected with said upright, and also by the circuit-wires 35 with the electromagnet 32, which is connected with the other upright 19, and by means of said circuit-closing device, the wires 35 being divided, as shown at 36, to include a source of electrical energy, the electromagnets 32 may be energized to attract the armature devices 33, raising the ends 31 of the catch-arms 27, depressing the catch-head 28, and disengaging the same

from the beveled ends 29 of the arms 20, thus allowing the coiled springs 24 to raise said ends 29, together with the tape or cord 22, which latter, as shown in the drawings, extends across the race-track 4 at a suitable distance above the same and above the side rails 5 at either side of the race-track, constituting the barrier proper, at one side of which the starting horses are lined. The circuits connecting the source of electrical energy 36, contact device 34, and the electromagnet 32 are clearly shown in Fig. 3, and the eletromagnet 32 may thus be energized by the starter of the race at one side of the race-track by his operating the circuit-closing device 34.

At 38 I have shown a starter's stand, which is, as is customary, arranged at one side of the race-track adjacent the starting-line and in which the starter takes his place to initiate the race by sending the horses over the line on even terms. In using the starting-gates for this purpose it is necessary that the starter be able to raise the barrier at the proper moment when he desires to send the horses over the line. Therefore I have shown the circuit-wires 35 of both of the electromagnets 32 connected up to branch circuit-wires 39, which extend to the starter's box and are electrically connected with a circuit-closing device 40, which is connected with the starter's stand, as shown in the drawings. As soon as the starter decides to send the horses over the line upon the arrival of the movable starting-gate, together with the horses at the line, he operates the circuit-closing device 40 and the barrier 22 rises, allowing the horses to go over the line, and the race is thus started. If desired, the controlling apparatus for regulating the movement of the starting-gate upon the tracks may also be installed upon the starting-stand and be under control of the starter.

The uprights 19 are connected at their tops by a cross-brace 37, whereby joint movement of the two uprights with their respective trucks and connected parts may be maintained. In the use of my improved starting-gate the circuit-wires 16, by means of which the electric motors 11 are energized, are also connected with a suitable starting device or controller by means of which the movement of the said trucks may be governed. This controller device is not shown and may, if desired, be mounted upon the truck 9,

with the upright 19 of which the circuit-closing device 34 is connected, and may be operated by the same person who operates the said circuit-closing device. It is understood that this controller device may be of any usual or desired form and forms no part of this invention and is not shown, for the reason that its application to the electric motors is well known and of common occurrence.

In use the electric motors 11 are energized to move the trucks 9 and connected parts above described upon the tracks 7 rearwardly of the starting-line, which is not shown in the drawings, and the horses to start in the race are lined up abreast of the tape or cord 22. At a given signal a closed circuit is established through the wires 16 of the motors 11, and the trucks 9 are moved toward the starting-line, together with the connected parts, the horses also moving with the same and keeping abreast of the tape or cord 22. When the starting-gate comes to the starting-line, if all the horses be on even terms in respect to position with relation to said line, the circuit, closing device 34 is operated to raise the ends 31 of the catch-arms 27, and the barrier, consisting of the arms 20 and tape or cord 22, is raised, allowing the horses to pass forward, thus initiating the race, or, as shown in the drawings, the circuit-closer 40 may be operated with the same effect.

The entire device may be operated by an attendant upon that one of the trucks 9 the upright 19 of which is provided with the circuit-closer 34, and which same truck may be provided with the starting or controlling device for the electric motors 11. This attendant may operate in connection with the official starter of the race, who may be located at any desired point of vantage, and which attendant may control his operations in accordance with signals received from the starter. If desired, however, the controlling device for the electric motors 11, together with the circuit-closing device 24, may be directly under control of the starter himself by means of suitable electrical connections, such as will readily suggest themselves to any one skilled in the art and as shown in Fig. 1.

By means of the improved starting-gate above described all the disadvantages of starting horses from a standstill are obviated and an eminently-fair start of a race may be made. Its adoption for race-tracks does not necessitate any material alteration in the same, as it only requires the installation of the rails of the track 7 at either side of the race-course.

Having fully described my invention, I claim as new and desire to secure by Letters Patent—

1. As an improved starting device for races, a movably-mounted starting-gate provided with supports arranged at either side of the race-track, a motor connected with one of said supports, and means for operating said gate, substantially as shown and described.

2. The herein-described improved starting device for races, comprising a movable barrier, consisting of two uprights, each of which is supported by a truck at one side of the race-track, and operating upon rails or tracks arranged parallel with said race-track, a motor carried by one of said trucks, a gate-arm pivoted to each of said uprights, means for normally maintaining said gate-arms in a raised position, devices which operate in connection with said gate-arms to maintain the same in depressed position, electromagnetic devices connected with said uprights and which operate in connection with said latter devices to free said arms and allow the same to be moved into a raised position, and a circuit-closing device by means of which a circuit may be closed through said electromagnetic devices, said gate-arms being connected at their outer ends by means of a barrier-tape or cord, substantially as shown and described.

3. A race course or track provided at a pre-determined point with a starter's stand, rails or tracks arranged at either side of said race course or track, trucks movably mounted thereon and provided with motor devices, a barrier connected with said trucks, means for normally holding said barrier in a depressed position, electromagnetic devices which operate in connection with said means for freeing said barrier, whereby the same may be moved into a raised position, said electromagnetic devices being electrically connected with a circuit closing device which is installed in connection with said starter's stand, whereby said starting-gate may be operated from said starter's stand, substantially as shown and described.

4. A race course or track provided at a predetermined point with a starter's stand, movable uprights arranged at either side of the race-track and one of which is provided

with a motor, a movable barrier connected with said uprights, means for normally holding said barrier in a depressed position, electromagnetic devices which operate in connection with said means for freeing said barrier, whereby the same may be elevated, a controlling device for said motor and a controlling device for said electromagnetic devices, said latter controller being installed in connection with the said starter's stand, substantially as shown and described.

In testimony that I claim the foregoing as my invention I have signed my name, in presence of the subscribing witnesses, this 19th day of December, 1899.

Samuel Stedeker.

Witnesses: C. C. Olsen, V. M. Vosler.

DEFENDANTS' EXHIBIT "V".

BERTRAM PATENT NO. 729,120

MAY 26, 1903.

No. 729,120. PATENTED MAY 26, 1903.

G. BERTRAM.

THIRD RAIL ELECTRIC RAILWAY SYSTEM.

APPLICATION FILED FEB. 28, 1903.

NO MODEL.

Fig. 1

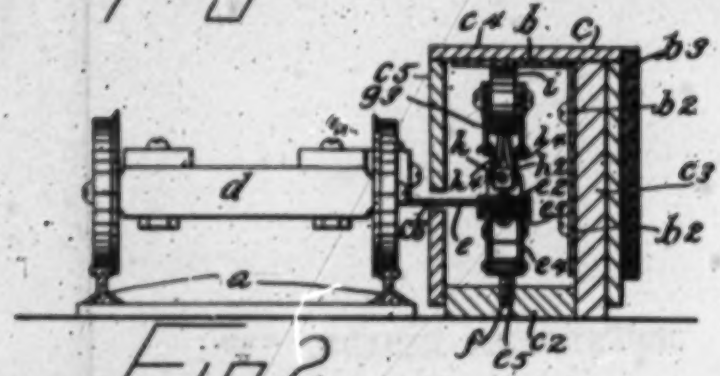


Fig. 2.

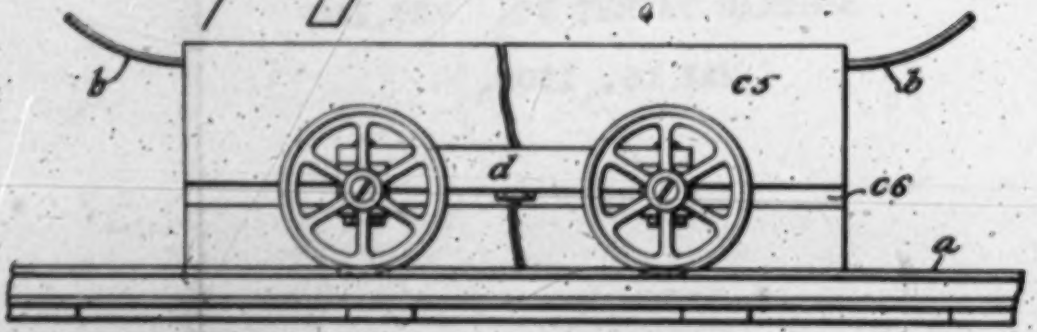


Fig. 3

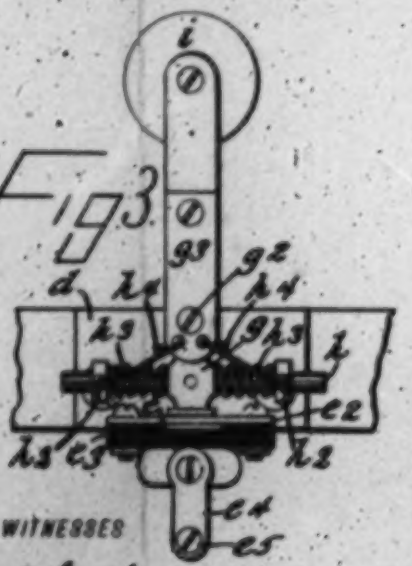
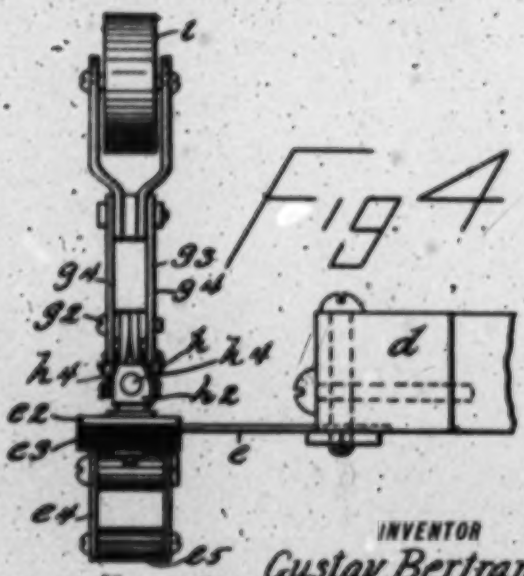


Fig. 4



WITNESSES

S. L. Gottheimer

F. A. Stewart

INVENTOR

Gustav Bertram

BY Edgar Tate & Co.

ATTORNEYS.

No. 729,120. Patented May 26, 1903.

United States Patent Office

Gustav Bertram, of Brooklyn, New York

Third-Rail Electric-Railway System

Specification Forming Part of Letters Patent No. 729,120, Dated May 26, 1903

Application Filed February 28, 1903. Serial No. 145,498 (No Model)

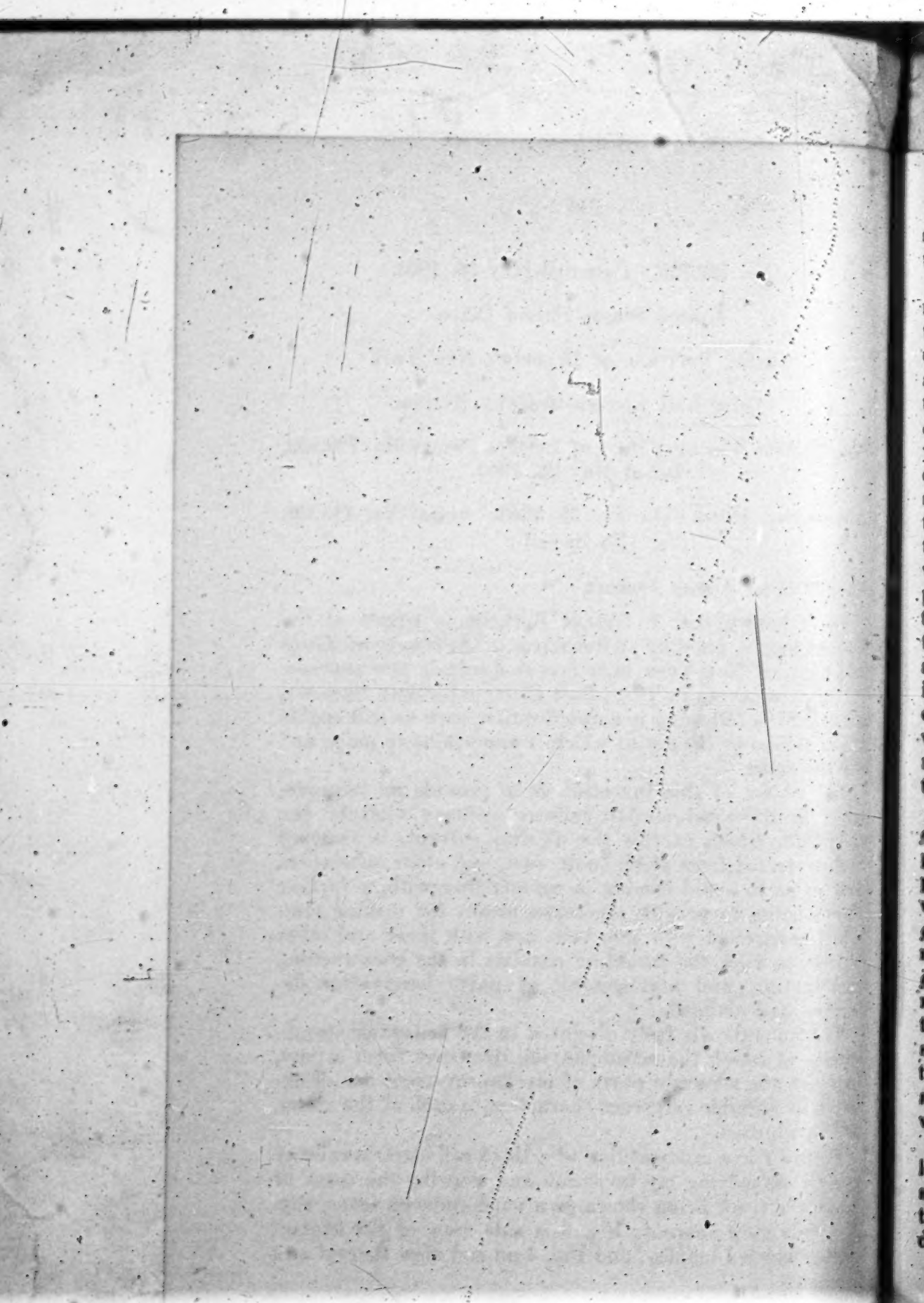
To all whom it may concern:

Be it known that I, Gustav Bertram, a citizen of the United States, residing at Brooklyn, in the county of Kings and State of New York, have invented certain new and useful Improvements in Third-Rail Electric-Railway Systems, of which the following is a specification, such as will enable those skilled in the art to which it appertains to make and use the same.

The object of this invention is to provide an improvement in third-rail electric-railway systems whereby the third-rail, which carries the electric current, is inclosed and protected from sleet, snow, rust, and other substances and so as to avoid coming in contact therewith, a further object being to provide improved means for making electrical connection with said rail; and with these and other objects in view the invention consists in the construction, combination, and arrangement of parts hereinafter described and claimed.

The invention is fully disclosed in the following specification, of which the accompanying drawings form a part, in which the separate parts of my improvement are designated by suitable reference characters in each of the views, and in which—

Figure 1 is a cross-section of a third-rail electric-railway system embodying my invention and showing the truck of a car, the truck being shown on a much-reduced scale; Fig. 2, a side view thereof; Fig. 3, a side view of the contact device which I employ, and Fig. 4 an end view thereof and



showing the means for connecting the contact device with the truck of the car.

In the drawings forming part of this specification I have shown at *a* the main rails of a railway-track, and at *b* the third or electric rail, which is inclosed in a casing *c*, which extends the full length of the track and which comprises a bottom member or support c^1, a back member c^2, and a top c^3, and in the form of the construction shown the casing *c*, which incloses the third or electric rail, is also provided with a front c^4, in which is formed a longitudinal slot or opening c^5. The third or electric rail is L-shaped in cross-section, and one member thereof is secured to the back c^2 of the casing by means of bolts or screws b^1, and the back of the casing is also provided with insulating material b^2, which covers the outer ends of said bolts or screws and prevents contact therewith. I have also shown at *d* a car-truck, which is on a much-reduced scale, and secured to this truck in the usual or any desired manner is a contact-arm *e*, which passes through the slot or opening c^5 and the inner end of which is provided with a plate e^1, to the bottom of which is secured insulating material e^2, to the bottom of which is secured a wheel e^3, which carries an antifriction-roller e^4, which is adapted to bear on a rail *f*, secured in the bottom of the casing *c*.

To the top of the plate e^1 is secured an upright member *g*, to which is pivoted at g^1 a trolley-arm g^2, preferably composed of separate side members g^3, the lower ends of which project below the pivotal support at g^1, and passing transversely through the bottom portion of the upright member *g* is a shaft *h*, on the opposite ends of which are loosely mounted collars h^1, between which and the upright member *g* are placed spiral springs h^2, and said collars h^1 are connected with the downwardly-directed members g^4 of the trolley-arm g^2 by links, wires, or similar devices h^3, and the said links, wires, or similar devices h^3 serve to hold the trolley-arm g^2 in an upright position, as shown in Figs. 3 and 4, while at the same time permitting it to swing backwardly and forwardly.

In the upper end of the trolley-arm g^2 is mounted a trolley-wheel or similar device *i*, and said trolley-wheel or similar device is adapted to bear on the under surface of the contact portion of the third rail *b*, and in Fig. 1 of the drawings the trolley-wheel *i* is shown in operation and the

trolley-arm is bent or inclined backwardly, this being the position it assumes when in operation.

It will be understood that the contact-arm *e*, which is connected with the truck *d* and which carries the trolley-arm g^3, may be of any desired form and may be connected with the truck in any preferred manner, and my invention is not limited to the form thereof nor to any particular means for connecting the same with the truck, all that is necessary in this connection being to provide an arm which may be secured to the truck and which will pass through the slot or opening c^6 and support the trolley-arm g^3 in the manner described and through or by which the electric current is conveyed to the motor on the truck or car and which is not shown.

The front c^5 of the casing *c*, in which the third or electric rail is placed, is not absolutely essential, nor is the form of the third rail herein shown and described, and any suitabel form of rail may be employed.

By means of this construction it will be seen that the third or electric rail is so protected that contact therewith by persons in proximity thereto cannot be made, and fatal accidents are thus avoided, and it will also be seen that sleet, snow, or other substances which would prevent electrical connection therewith by the trolley-wheel *i* cannot collect thereon or be deposited thereon. It will also be apparent that by reason of the fact that the trolley-arm is free to swing in a vertical plane and the further fact that the springs h^3 operate to normally hold it in an upright position a proper connection with the rail *b* will always be made regardless of the position of the car or truck and of the movement thereof.

Having fully described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. In a third-rail electric-railway system, a contact-arm adapted to be connected with the truck of a car, said arm being provided with an upright member, a trolley-arm pivoted to said member, a shaft mounted transversely in the bottom portion of said member, collars loosely mounted on said shaft and connected with the side portions of the trolley-arm below its pivoted support, springs placed on said shaft between said collars and the upright member, and a trolley-wheel mounted in the end of said trolley-arm, substantially as shown and described.

2. In a third-rail electric-railway system, a contact-arm adapted to be connected with the truck of a car, said arm being provided with an upright member, a trolley-arm pivoted to said member, a shaft mounted transversely in the bottom portion of said member, collars loosely mounted on said shaft and connected with the side portions of the trolley-arm below its pivotal support, springs placed on said shaft between said collars and the upright member, and a trolley-wheel mounted in the end of said trolley-arm, said contact-arm being also provided on the bottom side thereof with a depending support and an antifriction-roller mounted therein, substantially as shown and described.

3. In a third-rail electric-railway system, a contact-arm adapted to be connected with the truck of a car, a trolley-arm pivotally connected with said contact-arm, springs for holding said trolley-arm in an upright position, a trolley-wheel mounted in the upper end of said trolley-arm, and a depending member connected with said contact-arm and provided with an antifriction-roller, substantially as shown and described.

In testimony that I claim the foregoing as my invention I have signed my name, in presence of the subscribing witnesses, this 27th day of February, 1903.

Gustav Bertram.

Witnesses: F. A. Stewart, C. E. Mulreany.

DEFENDANTS' EXHIBIT "W"

BUCKLEY PATENT NO. 319,881

JUNE 9, 1885.

(No Model.)

W. P. BUCKLEY.

TRUSS FRAME FOR ROOFS OF BUILDINGS.

No. 319,881. Patented June 9, 1885.

Fig. 1.

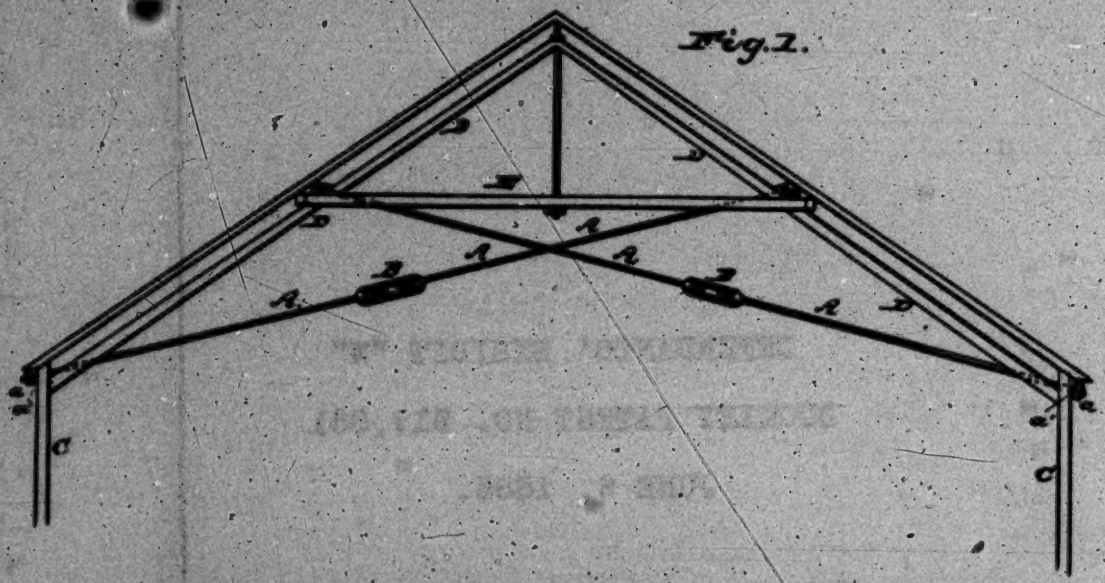
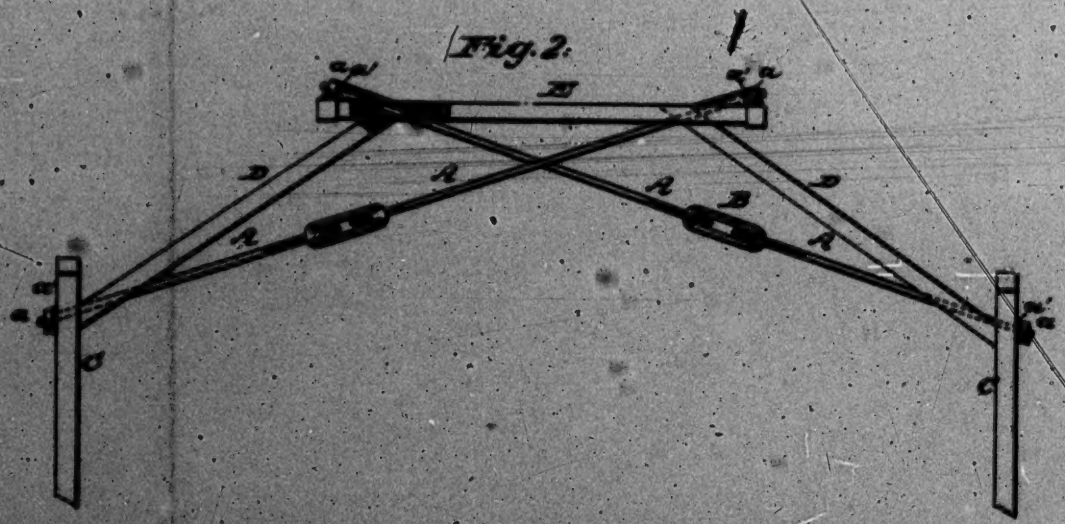


Fig. 2.



WITNESSES:

Fred. C. Dieterich

INVENTOR:

Wm. P. Buckley

United States Patent Office

William P. Buckley, of Oxford, New York, Assignor to Himself and Ward Van Der Lyn, of Same Place

Truss-Frame for Roofs of Buildings

Specification Forming Part of Letters Patent No. 319,881, Dated June 9, 1885

Application Filed March 23, 1885. (No Model)

To all whom it may concern:

Be it known that I, William P. Buckley, a citizen of the United States, residing at Oxford, in the county of Chenango and State of New York, have invented certain new and useful Improvements in Truss-Frames for Roofs of Buildings, of which the following is a description.

Figure 1 in the drawings represents a cross-section through the roof of a building constructed according to my invention. Fig. 2 is a similar view showing a modification of the same.

My invention relates to truss-frames for roofs of buildings; and it consists in the detailed construction of the frame-work of which the trusses which support the weight of the roof are composed.

Prior to my invention roofs for buildings have been constructed with trusses for supporting the weight of the roof. These trusses consisted of various arrangements of frame-work for supporting the roof, and were united by a horizontal member or tie-beam at their lower ends, which prevented the weight of the roof from forcing out the walls of the building.

I construct the frame-work of which the trusses for supporting the weight of the roof are composed in such a manner as to give the greatest amount of strength, absolute security from building spreading or roof settling, and at the same time avoid the necessity of using horizontal members or tie-beams.

I will now proceed to describe my invention with reference to the accompanying drawings, in which similar letters of reference indicate corresponding parts in all the figures.

A are rods made in two parts, and provided with nuts *a* and washers *a'* at their extreme ends. The two parts of which each rod A is composed are united together by the swivel-nut B, made with right and left hand screw-threads, which engage with similar threads on the ends of the two parts of the said rods.

C are vertical posts which form part of the walls of the building. D are the braces which support the weight of the roof. E is a short horizontal beam uniting the upper ends of braces D. The rods A cross one another. Their lower ends pass through posts C and braces D. Their upper ends pass through braces D and the short beam E. The swivel-nuts B can be turned so as to draw the whole of the frame-work firmly together.

The other parts of the roof which I have shown and not described do not differ materially from those commonly employed in the construction of roofs for buildings.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

The combination of the rods A, provided with right and left hand screw-threads, the swivel-nuts B, posts C, braces D, and beam E, substantially as described and shown, and for the purpose set forth.

William P. Buckley.

Witnesses: Solomon Bundy, Ward Van Der Lyn.

DEFENDANTS' EXHIBIT "X"

HARVEY PATENT NO. 414,976

NOVEMBER 12, 1889.

(No Model.) 4 Sheets—Sheet 1.

G. L. HARVEY.

PORTABLE HOUSE.

No. 414,976. Patented Nov. 12, 1889.

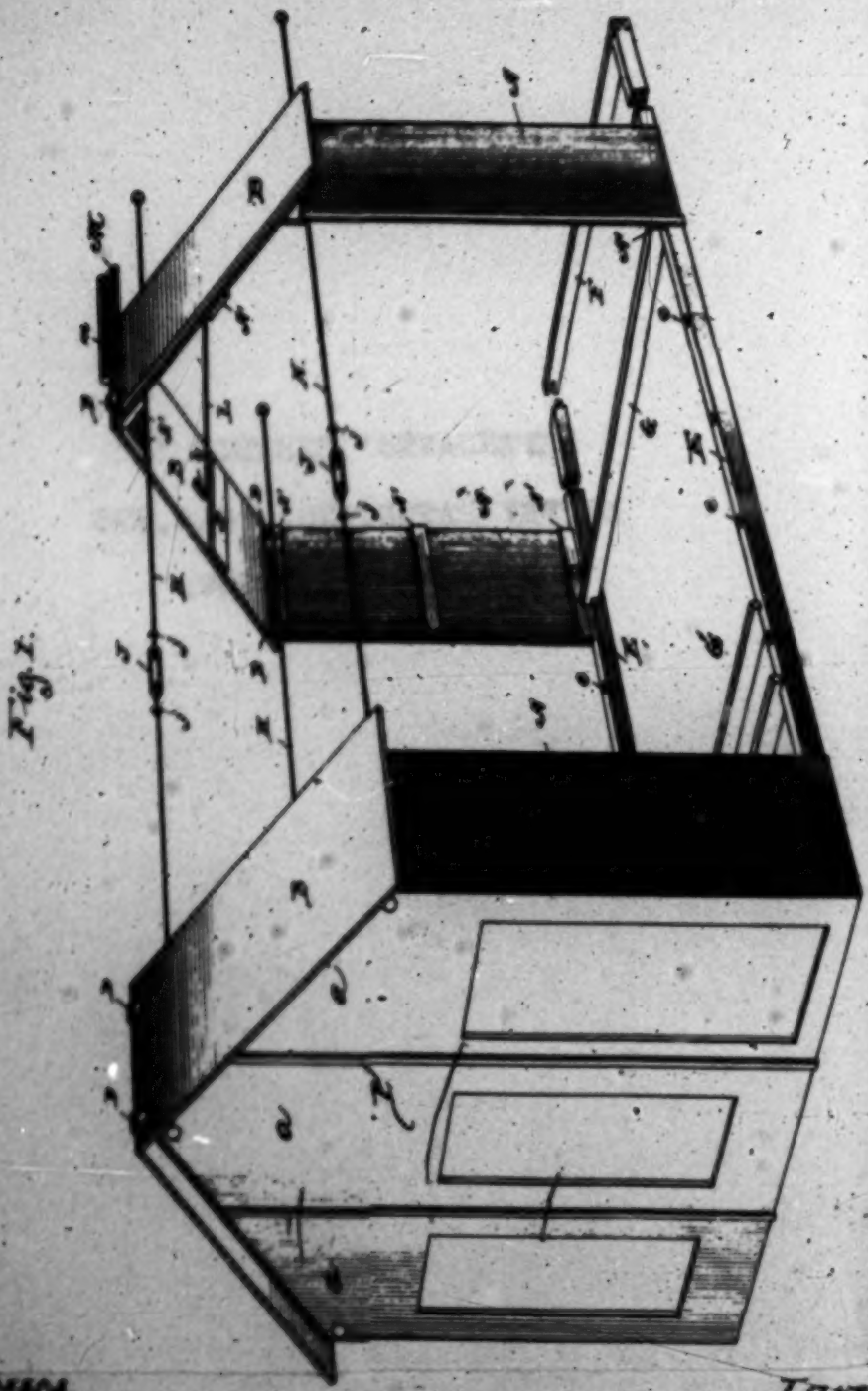


Fig 1.

Witnesses,
E. F. Mann,
Frederick Goodwin

Inventor.
George L. Harvey
By Offield & Towle Atty's.

(No Model.) 4 Sheets—Sheet 2.

G. L. HARVEY.

PORTABLE HOUSE.

No. 414,976. Patented Nov. 12, 1889.

Fig. 2.

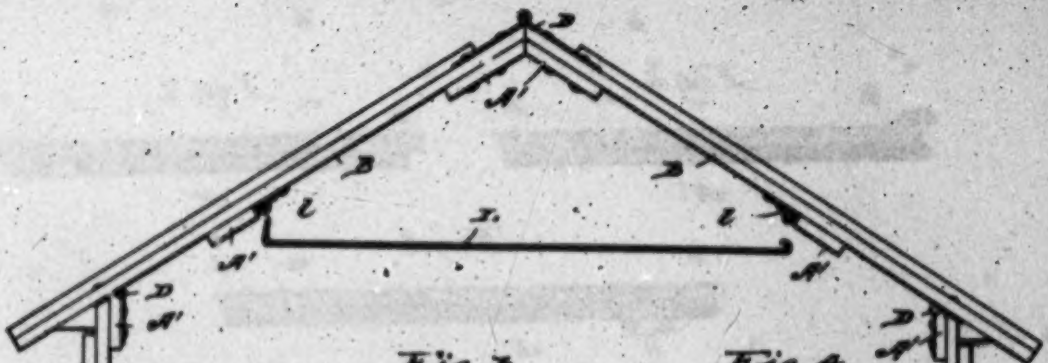


Fig. 3.

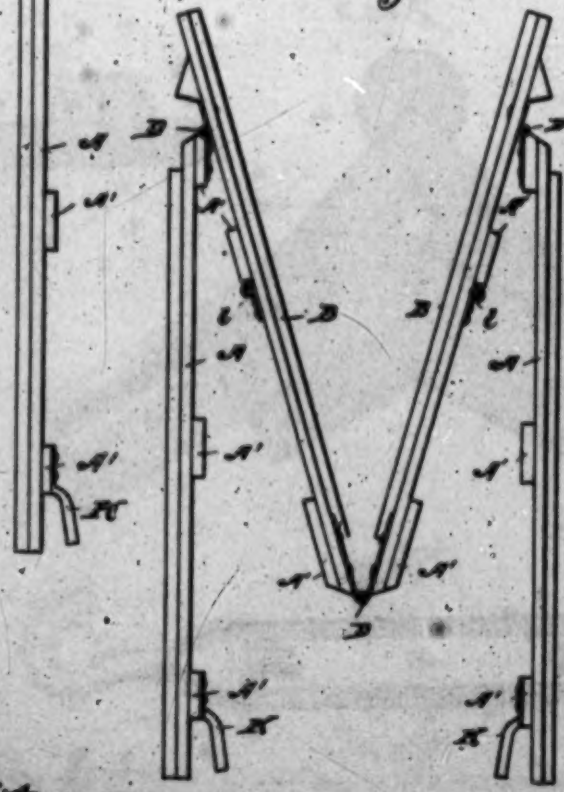


Fig. 4.

Witnesses,
F. P. Mann,
Frederick F. Goodwin.

Inventor
George L. Harvey
By Offield & Towle
Att'ys.

(No Model.) 4 Sheets—Sheet 3.

G. L. HARVEY.

PORTABLE HOUSE.

No. 414,976. Patented Nov. 12, 1889.

Fig. 5.

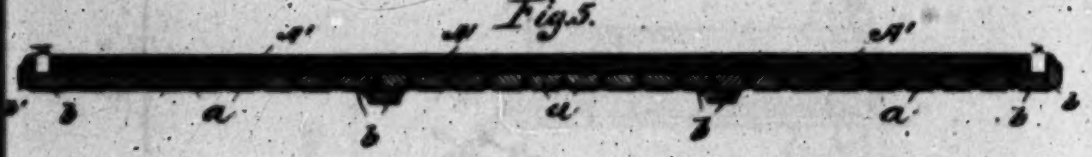


Fig. 6.

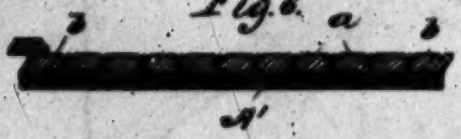


Fig. 7.

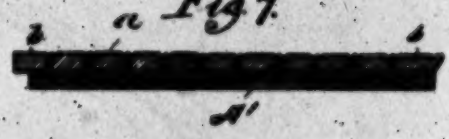


Fig. 8.

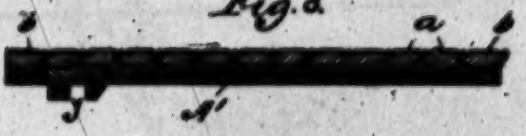


Fig. 13.

Fig. 3.

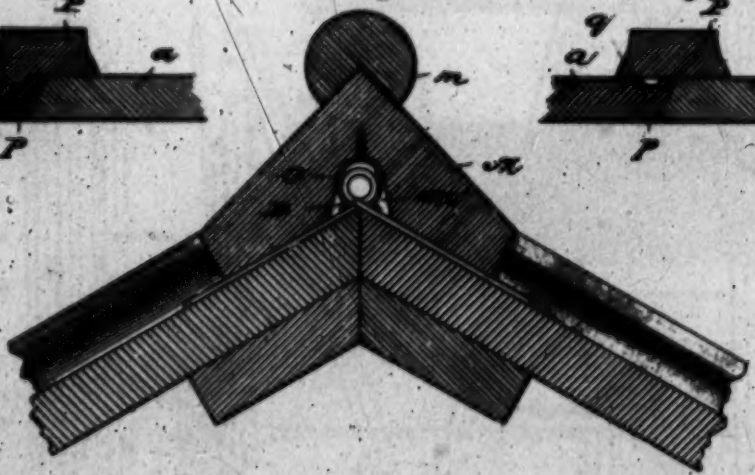


Fig. 14.

Fig. 10.

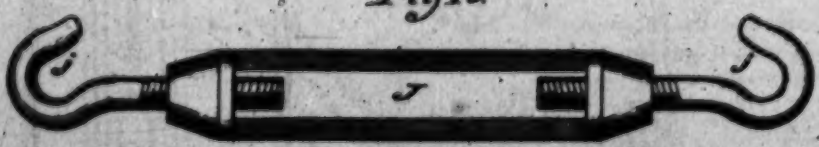
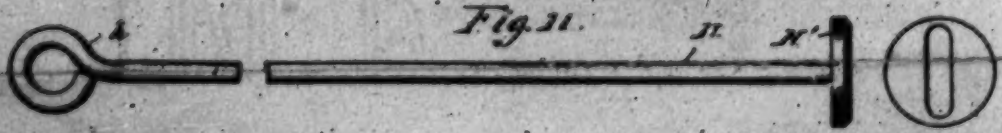


Fig. 12.

Fig. 11.



Witnesses,
D. F. Mann,
Frederick Goodwin

Inventor,
George L. Harvey
by Offield & Towle & Attys.

(No Model.) 4 Sheets—Sheet 4.

G. L. HARVEY.

PORTABLE HOUSE.

No. 414,976. Patented Nov. 12, 1889.

Fig. 15.

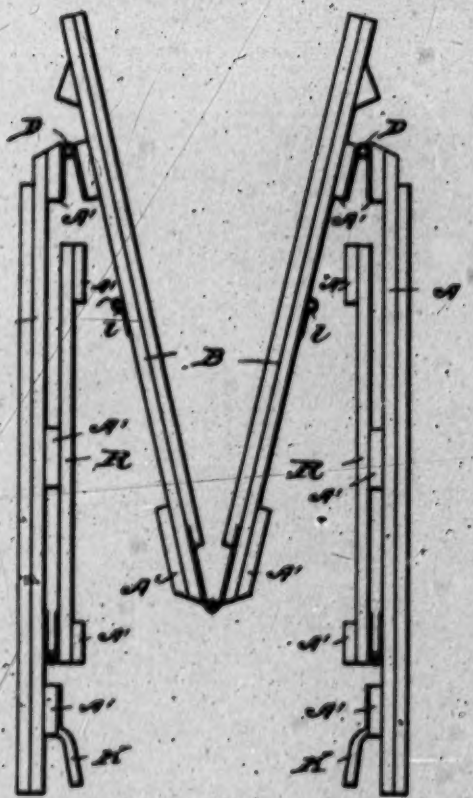
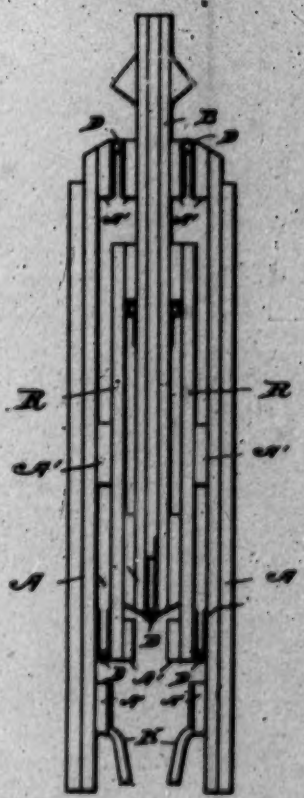


Fig. 16.



Witnesses,
L. F. Mann.
Frederick C. Goodwin

Inventor:
George L. Harvey.
By. Offield & Towle
Attys.

United States Patent Office

George L. Harvey, of Chicago, Illinois

Portable House

Specification Forming Part of Letters Patent No. 414,976, Dated November 12, 1889

Application Filed February 21, 1889. Serial No. 300,728. (No Model)

To all whom it may concern:

Be it known that I, George L. Harvey, a citizen of the United States, residing in Chicago, county of Cook, and State of Illinois, have invented certain new and useful Improvements in Portable Houses, of which the following is a specification.

My invention relates to houses which are so constructed that they may be readily taken down and transported from place to place, and which are adapted to serve for summer-houses, as temporary headquarters for contractors, surveyors, and similar purposes; and my invention consists in the improved constructions, adaptations, combinations, and arrangements hereinafter described, and particularly pointed out in the claims.

In the accompanying drawings, Figure 1 is a perspective view showing the skeleton of a house (one end complete) built according to my method and containing my improvements. Fig. 2 is an end elevation of the side walls and roof extended and ready to be secured in position for use. Fig. 3 shows the same parts represented in Fig. 2 partially folded. Fig. 4 shows the same parts completely folded and ready for transportation. Fig. 5 is a transverse section through the end wall of the house. Fig. 6 is a similar view of one of the interior side sections. Fig. 7 is a similar view of one of the end side sections. Fig. 8 is a sectional view of an end roof-section. Fig. 9 is a transverse section through the cap of the roof structure. Fig. 10 shows a turnbuckle which I use in my construction. Fig. 11 shows a tie-rod, a central section thereof broken away. Fig. 12 shows a washer for said tie-rod. Figs. 13 and 14 show two

forms of battened joints which I employ in joining the sections together to form the structure; and Figs. 15 and 16 show side, roof, and floor sections hinged together, the first showing the parts partially and the second completely folded.

In carrying out my invention I prefer to construct the side walls, the roof, and the floor of the house in sections of convenient width and to hinge the floor-sections and roof-sections to the side sections, the roof portions projecting in the usual manner to provide eaves, and being hinged together at their meeting ends in such a manner that they may be collapsed or folded with their outsides in contact, so as to rest between the side sections. The end sections I prefer to construct in suitable widths, which may be hinged together or secured by any suitable joint.

The foundations of the building I prefer to construct of side and end sills having suitable cross-sills to support the floor-sections, the side sills being provided with mortises to receive the ends of braces secured to the side sections, and to anchor or tie the upper portion of the structure together by means of tie-rods running longitudinally of the building, and braces for the roof-sections extended transversely to the tie-rods.

I have also provided a peculiar construction of saddle-boards for the roof, and have devised special forms of joints for the sections.

In the drawings, Figure 1 shows two sections each comprising side-wall and roof portions hinged together, as above described, one of the sections being an interior portion of the building and the other being adapted to form the ends of the side walls and roof.

A A represent side-wall portions, and B B roof portions joined to the former by means of hinges D.

E E are side sills having mortises *e* therein, framed with the end sills F and cross-sills G.

H is a tie-rod, of which three may conveniently be used, one at the apex of the roof and one at each of the angles thereof with the side walls. These tie-rods H, Fig. 11, are preferably provided at one end with an eye *h* and at the other with a head H′, and the stem of rod H passes through a suitable aperture in the end wall and projects to nearly the length of the building, and another rod of like construction projecting from the opposite end wall of the building,

and the two rods may be connected together by means of the turn-buckle J, having the hooks *j*, as shown in Fig. 10. These tie-rods are drawn together by the turn-buckle, thus clamping tightly the various sections of the building together. Each of the side and roof portions of the building will, as before stated, be constructed in sections, and each section may be composed of a plurality of timbers *a*, provided with tongues and grooves, and end timbers *b*, which will have one plain edge. These timbers may be secured to cleats A', as many as necessary, the lower cleat being adapted to rest on the sills E. Each of the side sections are provided toward their lower ends with the feet or braces K, the free ends of which are adapted to enter the mortises *e* of the sills E.

L represents tie-rods for the roof, the ends of which may be bent at right angles and adapted to enter keepers *l*, secured to the roof structure.

The strips or cleats to which the timbers of the roof-sections are secured will be so arranged as to clear the cleats of the side-wall sections when folded together, as clearly shown in Fig. 4.

By referring to the detail figures, 5 to 8, inclusive, it will be seen that I have made special provision for forming tight joints at the angles of the structure, whereby also the parts are prevented from movement upon each other. In Fig. 5 the end wall is shown complete, the end timbers *b* having a batten *b'* secured flatwise upon their edges, so as to form the recess *x*, which will receive the projecting end of the timber *b* of the end side section shown in Fig. 7, while in Fig. 8 is shown a detail of the roof structure at the end, wherein battens are so arranged as to provide a recess *y* to receive the ends of the vertical timbers of the end section, whereby the roof is firmly anchored to said end sections.

To prevent leaking at the apex of the roof, I prefer to employ the saddle-board M, which may be adapted to bestride the apex of the roof, and it may have the finish or molding *m* thereon. A cavity or recess M' is formed on the interior of this saddle-board M just over the apex of the roof, and a spring-clamp O is secured in the recess M', its arms being adapted to embrace the knuckle of the hinges D, which secure the roof-sections together, whereby the saddle-board is conveniently secured in place.

In Fig. 13 I have shown a joint for the sections composing the walls of the structure wherein the opposing faces of the timbers *a*, which are intended to be brought into contact, are cut at reverse angles to each other, and a groove *p* is formed in one of the timbers, in which is seated a tongue *p'* of a batten P, the other edge of said batten being nailed or otherwise secured to the timber of the adjoining section. In Fig. 14 the same construction is used, except that the tongue *p'* is omitted and a piece of flexible rubber, doubled, if desired, and indicated at *q* in said figure, is placed in the groove, the latter being secured to cover the rubber, the free edge of which will be pressed outwardly against the lower face of the batten.

In Figs. 15 and 16 I have shown floor-sections R, which will be of the same width as the side and roof sections and will have their lower ends hinged to the former, so as to fold up against them for transportation. These floor-sections will be of such length as to extend half the width of the building when unfolded.

In erecting a building constructed according to my invention it will be found expedient to first place the sills and cross-timbers and then erect thereon one or more of the hinged roof and side sections, as indicated in Fig. 1. The end walls or one of them may then be erected, and then the interior formed by adding the sections one at a time. The tie-rods L support the sections and prevent their collapse until the keepers are secured in place. When all of the sections are set up, the rods H are put in place, and the tightening up of these tie-rods by means of the turning up of these tie-rods by means of the turn-buckles operates to draw the upper portion of the structure tightly together, closing all the joints, and thus providing a strong, compact, and well-built house at small expense, and one which is easily taken apart and transported from place to place, as before described.

I claim—

1. In a portable house having its side walls and roof each composed of a plurality of sections, the combination of side sections and roof-sections hinged together, said roof-sections being hinged to each other, substantially as described.

2. In a portable house having its side walls and roof each composed of a plurality of sections, the combination

of side sections and roof-sections hinged together, said roof-sections being hinged to each other, and floor-sections hinged to the side sections, all of said sections adapted to be folded, substantially as and for the purpose described.

3. In a portable house having its side walls and roof each composed of a plurality of sections, the combination, with side sections and roof-sections hinged together, and said roof-sections hinged to each other, of sills provided with mortises, and bracing-feet adapted to be secured at one end to the side sections toward their bottoms and to have a bearing at their other ends in said mortises, substantially as described.

4. In portable houses composed of a plurality of sections each comprising side portions and roof portions hinged to each other, sills to support the lower ends of the structure, and tie-rods to secure the upper portions of the structure together, substantially as described.

5. In portable houses, the combination, with the side walls and roof, each composed of a plurality of sections, of removable end walls, and tie-rods adapted to anchor the end walls together, said tie-rods comprising end sections to be secured to said end walls, and a middle section composed of a turn-buckle, substantially as described.

6. In a portable house having its side walls and roof each composed of a plurality of sections, the wall-sections and roof-sections being hinged together and said roof-sections hinged to each other, the meeting edges of the side sections being beveled at reverse angles, and the face of one of said sections being provided with a groove, a rubber strip secured in said groove, and a batten secured to cover said groove and the joint between the sections, substantially as described.

George L. Harvey.

Witnesses: C. C. Linthicum, F. D. Butler.

DEFENDANTS' EXHIBIT "Y"

DUNBAR PATENT NO. 618,851

FEBRUARY 7, 1899.

No. 618,851 Patented Feb. 7, 1899.

E. E. DUNBAR.

PORTABLE BUILDING.

(Application filed Apr. 18, 1898.)

(No Model.) 2 Sheets—Sheet 1.

Fig. 1.

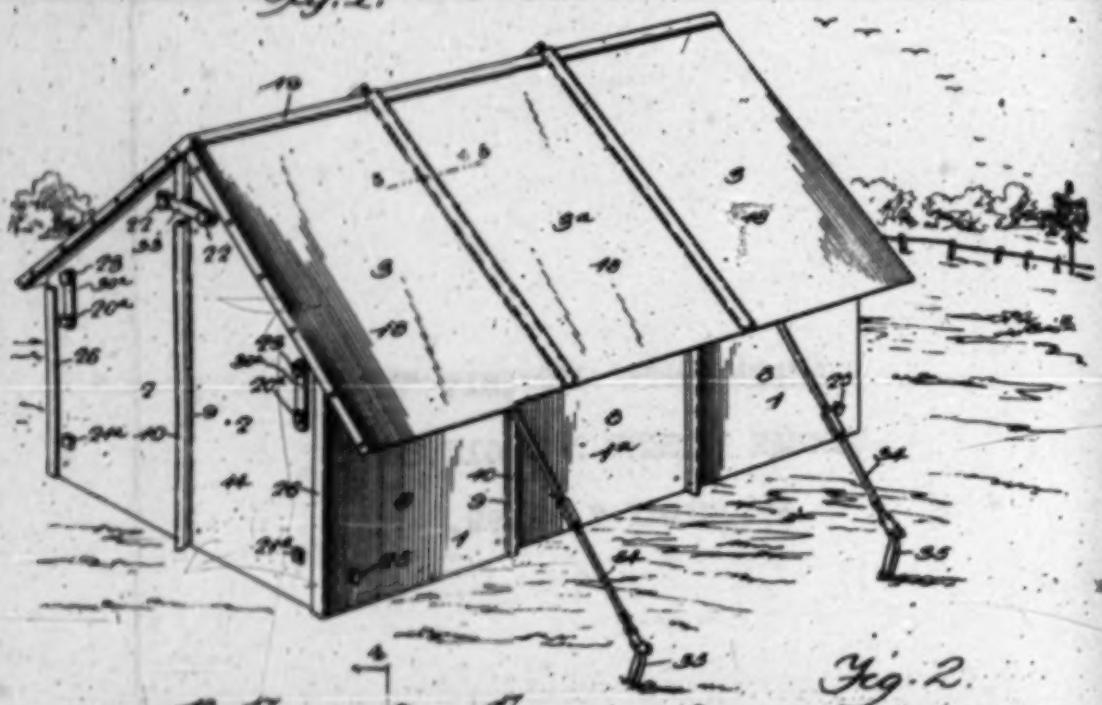
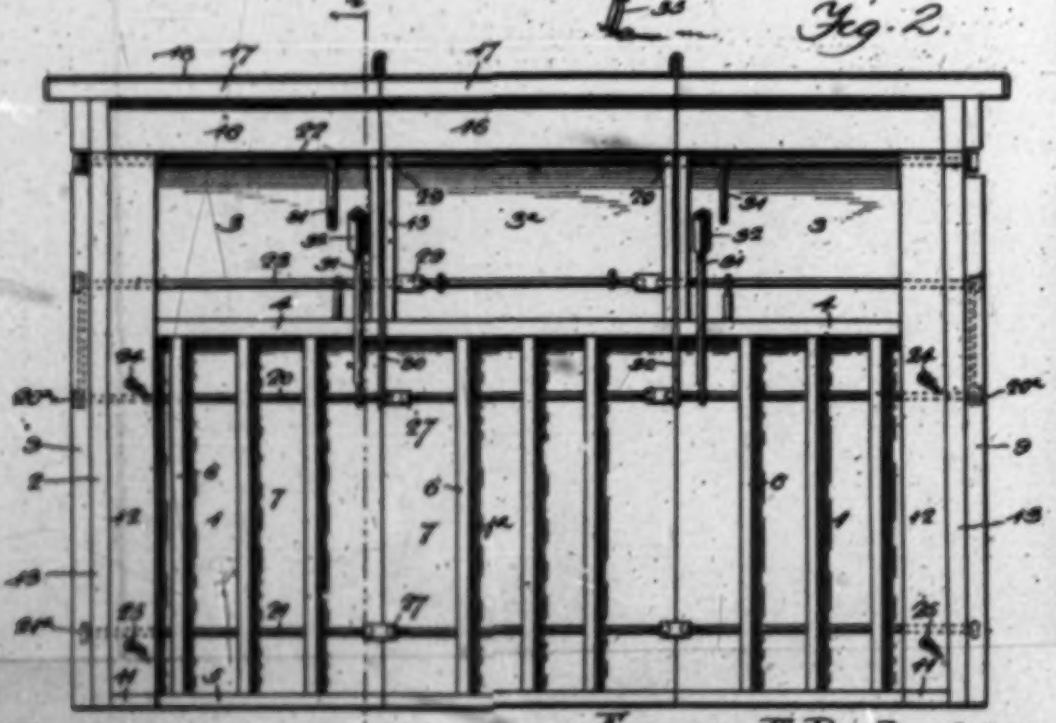


Fig. 2.



Witnesses

Chas. F. Blackwell.

Emmerson E. Dunbar, Inventor,

By his Attorneys,

C. A. Snow & Co.

No. 618,851. Patented Feb. 7, 1899.

E. E. DUNBAR.

PORTABLE BUILDING.

(Application filed Apr. 18, 1898.)

(No Model.) 2 Sheets—Sheet 1.

Fig. 3.

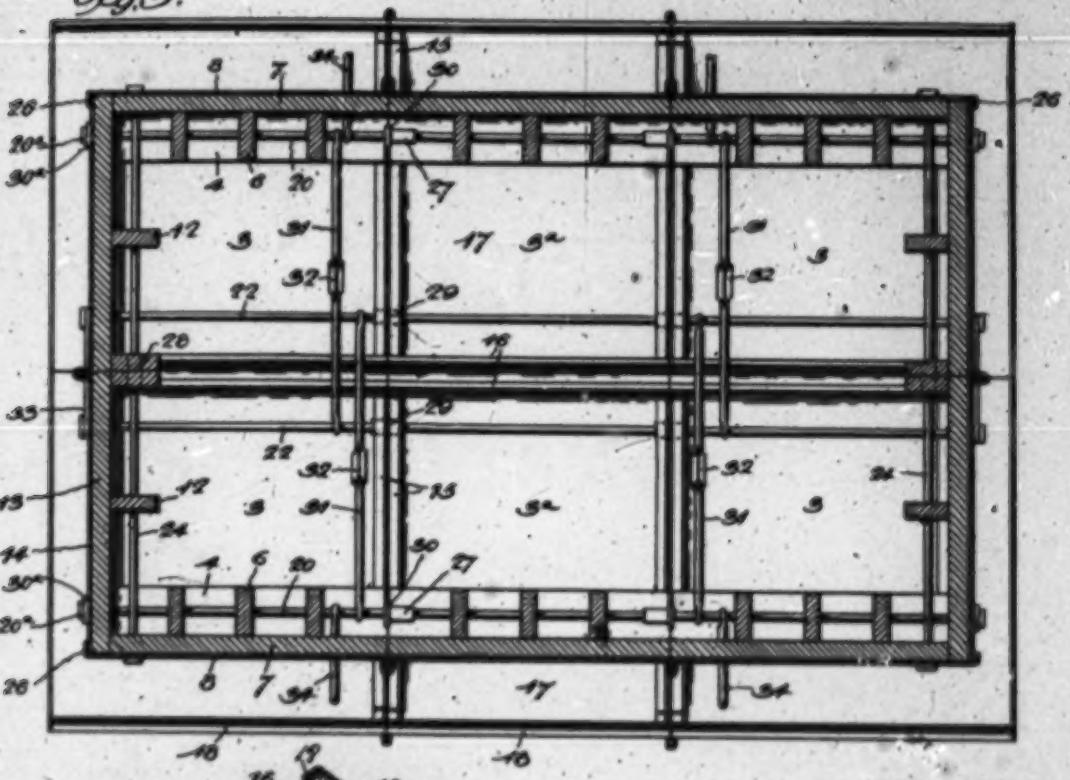


Fig. 4.

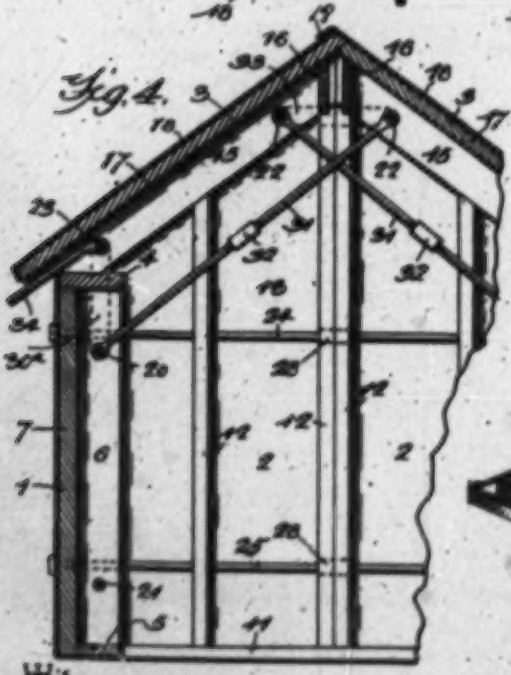


Fig. 5.

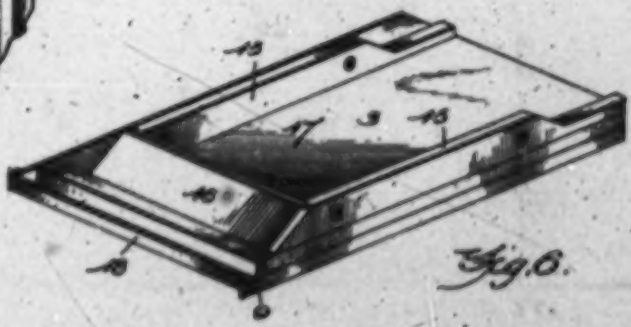


Fig. 6.

Witnesses
J. Stanford Bulwinkle.

Emmerson E. Dunbar, Inventor
By his Attorneys,
C. A. Snow & Co.

United States Patent Office

Emmerson E. Dunbar, of Delta, Ohio, Assignor of One-Half to Stephen A. Luthy, of Same Place

Portable Building

Specification Forming Part of Letters Patent No. 618,851, Dated February 7, 1899

Application Filed April 18, 1898. Serial No. 678,022. (No Model)

To all whom it may concern:

Be it known that I, Emmerson E. Dunbar, a citizen of the United States, residing at Delta, in the county of Fulton and State of Ohio, have invented a new and useful Portable Building, of which the following is a specification.

My invention relates to building construction, and has for its object to provide a portable sectional building adapted to be assembled, knocked down, and transported with facility, the parts being so braced and connected as to be mutually supporting and to effectually exclude rain, snow, and wind.

Further objects and advantages of this invention will appear in the following description, and the novel features thereof will be particularly pointed out in the appended claims.

In the drawings, Figure 1 is a perspective view of a building constructed in accordance with my invention. Fig. 2 is a central longitudinal section of the same. Fig. 3 is a horizontal inverted section taken in the plane of the upper side-wall tie-rods, as indicated by the line 3 3 of Fig. 2. Fig. 4 is a partial transverse vertical section on the line 4 4 of Fig. 2. Fig. 5 is a detail longitudinal section of the joint between two contiguous roof-sections on the line 5 5 of Fig. 1. Fig. 6 is an inverted perspective view of one of the roof-sections.

Similar numerals of reference indicate corresponding parts in all figures of the drawings.

The structure embodying my invention consists of sectional side and end walls secured together with interlocking joints at their meeting edges, a sectional roof having its members similarly interlocked at their contiguous edges,

and suitably-overhanging plates at the upper edges of the side walls to exclude wind and rain and give a suitable amount of ventilation. In the construction illustrated the building is of the gable type, as being specially adapted for the purposes for which my invention is designed; but it will be understood that I do not desire to be limited strictly either in this feature or as to the number of sections employed in the construction of the several walls of the building.

Referring to the drawings, the side walls consist of terminal sections 1 and an intermediate section 1^a, it being understood that any desired number of intermediate sections may be employed to suit the size of the building which is to be constructed. The end walls consist of sections 2 and the roof of terminal and intermediate sections 3 and 3^a.

Each side-wall section comprises a framework consisting of a plate 4 and a sill 5, connected by vertical studs 6, and a light boarding 7 or the equivalent thereof, said boarding being preferably covered exteriorly by a sheathing 8, of sheet-metal or the equivalent thereof. The sheathing-sections at the contiguous edges of adjoining wall-sections are provided with interlocking edges, formed in the construction illustrated by upturning the edges and folding one of the edges to receive the other. For instance, the edge of one of two adjoining sheathing-sections is upturned to form a flange 9, and the edge of the other sheathing section is also upturned, but is doubled upon itself to form a parallel walled groove 10, in which the flange of the first-named section is fitted to break the joint, and thus exclude air and moisture.

The end-wall sections are constructed similarly to the side-wall sections, with the exception that the plates are omitted, said walls thus comprising sill-sections 11, studding 12, boarding 13, and exterior sheathing 14, the contiguous edges of adjoining end-wall sections being interlocked, as hereinbefore described in connection with the side-wall sheathing-sections.

The roof-sections consist of rafters 15, connected at their beveled upper ends by ridge-pole sections 16, boarding 17, and sheathing-sections 18, said rafters being shouldered contiguous to their lower ends to rest upon the side-wall plates 4, as in the ordinary building construction. The

contiguous edges of the sheathing-sections 18 are also interlocked, as hereinbefore described in connection with the side-wall sheathing-sections, and the upper edges of the sheathing-sections 18 are so constructed as to break joint at the comb of the roof. The construction which is illustrated in the drawings embodies the termination of the sheathing-plates on the roof-sections of one side of the roof flush with the upper edges of the roof-boarding 17, while the sheathing-plates on the roof-sections of the other side of the roof are extended beyond the upper edge of the boarding and are flanged, as shown at 19, to overlap and break joint with the upper edges of the sheathing on the first-named roof-sections. The upper edges of the boarding on the second-named sections, however, abut against the under surfaces of the boarding of the first-named sections. This constitutes a double break-joint, which I have found to be effective in connection with construction of this class.

The means which I employ for maintaining the above-described wall and roof sections in their proper relative positions include longitudinal upper and lower side-wall tie-rods 20 and 21, longitudinal upper and lower roof tie-rods 22 and 23, and upper and lower transverse or end-wall tie-rods 24 and 25. The corresponding side and end wall tie-rods are arranged in contiguous horizontal planes, with their remote extremities extending through the walls of the structure and headed to bear against the exterior surfaces thereof. For instance, the side-wall tie-rods extend through registering openings in the side-wall studding and also through alined openings in the end-wall sections and are headed, as shown at 20^a and 21^a, and the end-wall tie-rods extend through alined openings in the studding 12 and in the side-wall sections and are correspondingly headed in contact with the exterior surfaces of the side walls. Correspondingly, the upper and lower roof tie-rods extend through registering openings in the rafters and also through alined openings in the end-wall sections and are terminally headed in contact with the exterior surfaces of said section. This system of tie-rods thus has the effect of securing the absolute alinement of the several sections comprising each wall of the structure and also the proper maintenance of the outer edges of the side and end wall sections in operative contact, and by flanging the outer edges of the terminal side-wall sheathing-plates, as shown

at 26, to overlap the contiguous edges of the end-wall sheathing-plates an effective break-joint is formed, which excludes moisture and wind at those points. It is desirable, however, to so construct the tie-rods as to provide for their manufacture at a minimum cost and at the same time facilitate their engagement and disengagement in the operation of assembling and disconnecting the members of the structure. In order to accomplish this, I construct the tie-rods in sections, which belong to and are carried, respectively, by the several wall and roof sections. For instance, each side-wall tie-rod consists of a plurality of tie-bolt or tie-rod sections, corresponding in number with the side-wall sections, and upon each intermediate side-wall section is arranged a plurality of right and left threaded nuts 27, into which the inner threaded extremities of the outer tie-bolt sections are fitted. These nuts may be and preferably are carried by the intermediate tie-bolt sections, into which the extremities of said intermediate sections are threaded in order that additional adjustment may be made at these points; but under any circumstances said nuts are connected by intermediate tie-bolt sections, whereby when the terminal tie-bolt sections are engaged with the nuts and are tightened by adjustment exteriorly of the walls of the structure the strain applied to the members of the structure is the same as though a continuous tie rod or bolt were to be used extending from one wall of the building to the diametrically opposite wall. In other words, the advantage of this arrangement is that the boarding and sheathing are relieved of strain, and the only strain which is applied to the wall-sections is to the frames thereof by the terminal bearing of, for instance, the end-wall sections against the extremities of the side walls. This provides for forcing the contiguous edges of the several side-wall sections into close contact, and thus insuring an efficient bearing of the sections at their meeting edges. The end-wall tie-bolts are correspondingly constructed, with the exception that, as illustrated, the tie-bolt sections extending inwardly from opposite side walls of the building are threaded into a common right and left threaded nut 28, located contiguous to the meeting edges of the end-wall sections. In the same way the sectional construction of tie-rods is applied to the roof-sections of the structure, each intermediate roof-section carrying right and left

threaded nuts 29, attached to the extremities of the intermediate tie-bolt sections and adapted to be engaged by the contiguous ends of the terminal tie-bolt sections in order that when the tie-bolts are tightened by the adjustment of the terminal sections a practically continuous rod will be formed, extending from one end wall to the other.

The lower edges of the roof-sections are anchored by means of links 30, having terminal eyes, which are fitted, respectively, upon the upper side-wall tie-rods 20 and the lower roof tie-rods 23, said links in the construction illustrated being arranged in the planes of the joints between the side-wall and roof sections; but it will be understood that while this is a convenient arrangement it is possible to materially vary these positions in order to secure the desired results in connection with buildings of different sizes and designed for different purposes without varying the principle of the construction. In addition to the anchor-links which are arranged within the building I also preferably employ auxiliary links 30^a, connecting the tie-rods 20 and 23 in contact with the exterior surfaces of the end walls, as shown.

The upper ends of the roof-sections are anchored by means of tensile roof-braces 31, which are of sectional construction and are terminally attached, respectively, to the upper side-wall tie-bolts 20 at one side of the building and the upper roof tie-bolts 22 at the opposite side of the building, the contiguous ends of the brace-sections being threaded into right and left threaded nuts 32 or being otherwise connected by means adapted for varying tension of the braces. The above-described arrangement of the roof-braces applies the strain thereof to each upper roof tie-bolt in a direction approximately perpendicular to the plane of those roof-sections by which said tie-bolt is carried, whereby any outward strain applied to the roof-sections will be resisted directly by the roof-braces, with no tendency to twisting and without subjecting them to any transverse strain. As additional means for insuring the proper relative positions of the roof-sections I preferably connect the upper roof tie-bolts by means of tie-links 33, which in the construction illustrated are arranged interiorly of the end walls, but may be disposed between said bolts at any other preferred points; also, under some circumstances it is desirable to employ anchor-rods 34, ex-

tending from the lower roof tie-bolts to anchor-pins 35, arranged exteriorly of the structure, as shown in Fig. 1.

From the above description it will be seen that the structure embodying my invention may be knocked down for storage or transportation by the disconnection of the several tie-bolts and roof-braces and may be reassembled at the desired point without the use of tools other than a wrench or the equivalent thereof for securing the desired tension of said bolts and braces, and, furthermore, that the number of sections into which the several wall and roof members of the building may be divided in order to secure the desired facility of erection and transportation may be varied to suit the dimensions of the structure, and that various other changes in the form, proportion, and the minor details of construction may be resorted to without departing from the spirit or sacrificing any of the advantages of this invention.

Having described my invention, what I claim is—

1. In a portable building, the combination with side walls and a roof composed of separable sections, of tie-bolts arranged parallel, respectively, with the walls and roof members, and adjustable tensile braces connecting upper wall tie-rods with the roof tie-rods, substantially as specified.

2. In a portable building, the combination with walls and a roof composed of separable sections, the roof being of pitched construction, of tie-bolts arranged respectively parallel with the walls and roof members, anchor-links connecting the wall tie-bolts with the lower roof tie-bolts, and adjustable tensile braces connecting the wall tie-bolts with upper roof tie-bolts, substantially as specified.

3. In a portable building, the combination with a roof and walls each composed of a plurality of separable sections, and having frames respectively including rafters and studs, of tie-bolts extending through registering openings in said frame members and having bearings against exterior surfaces of opposite walls, and connections between the tie-rods of the wall-sections and those of the roof-sections, substantially as specified.

4. In a portable building, the combination with a roof and side walls each composed of separable sections, of sectional tie-bolts arranged respectively parallel with the roof

and wall sections, the remote extremities of the terminal tie-bolt sections being headed for contact with the exterior surfaces of opposite walls, and the contiguous extremities of adjoining tie-bolt sections being connected by engaged adjusting devices, and connections between the tie-bolts of the side walls and those of the roof-sections, substantially as specified.

5. In a portable building, the combination with a roof and walls each composed of separable sections, of tie-bolts arranged respectively parallel with the roof and walls, and each composed of a plurality of sections corresponding in number with the respective walls, the intermediate wall and roof sections carrying permanently-attached tie-bolt sections, provided with terminal adjusting-nuts for engagement with the contiguous ends of terminal tie-bolt sections, and means for connecting the tie-bolts of the wall-sections with those of the roof-sections, substantially as specified.

6. In a portable building, the combination of a roof and walls each composed of a plurality of separable sections, each section having a frame and an exterior sheathing, tie-rods parallel with the planes, respectively, of the wall and roof sections for connecting the same in series, and roof-securing devices connecting the tie-bolts of the walls with those of the roof, the sheathing-sections being interlocked at their contiguous edges, substantially as specified.

7. In a portable building, the combination of a roof and walls each composed of a plurality of separable sections, each section having a frame and an exterior sheathing, tie-rods parallel with the planes, respectively, of the wall and roof sections for connecting the same in series, and roof-securing devices connecting the tie-bolts of the walls with those of the roof, the sheathing-sections being provided at their contiguous edges respectively with flanges and flange-receiving grooves, substantially as specified.

8. In a portable building, the combination of a roof and walls each composed of a plurality of separable sections, each section having a frame and an exterior sheathing, tie-rods parallel with the planes, respectively, of the wall and roof sections for connecting the same in series, and roof-securing devices connecting the tie-bolts of the walls with those of the roof, the sheathing-sections being provided

with interlocked contiguous edges, and the sheathing-sections at the cone of the roof having overlapping flanges, substantially as specified.

9. In a portable building, the combination of side and end walls, and a roof, each composed of a plurality of separable sections, upper and lower tie-bolts arranged respectively parallel with the wall and roof sections, anchor-links connecting the upper side-wall tie-bolts with the lower roof tie-bolts, and tensile braces connecting the upper side-wall tie-bolts with the upper roof tie-bolts, the braces extending from opposite sides of the structure being disposed in intersecting planes, and consisting of adjustable sections connected by threaded adjusting devices, substantially as specified.

10. In a portable building the combination with sectional side and end walls and a sectional hipped roof, of longitudinal and transverse tie-bolts arranged respectively parallel with and engaging the framework of the side and end wall sections, upper and lower tie-bolts connecting the roof-sections, anchor-links connecting side-wall tie-bolts with the lower roof tie-bolts, adjustable tensile braces connecting side-wall tie-bolts with upper roof tie-bolts, and tie-links transversely connecting the upper roof tie-bolts, substantially as specified.

In testimony that I claim the foregoing as my own I have hereto affixed my signature in the presence of two witnesses.

Emmerson E. Dunbar.

Witnesses: Geo. A. Everett, N. F. Carmon.

DEFENDANTS' EXHIBIT "J"

DELAHUNT PATENT NO. 573,452

DECEMBER 22, 1896.

(No Model.)

C. DELAHUNT.

MEANS FOR RIGIDLY CONNECTING PARTS OF BUILDINGS WITH EACH OTHER AND WITH THE FOUNDATIONS.

No. 573,452. Patented Dec. 22, 1896.

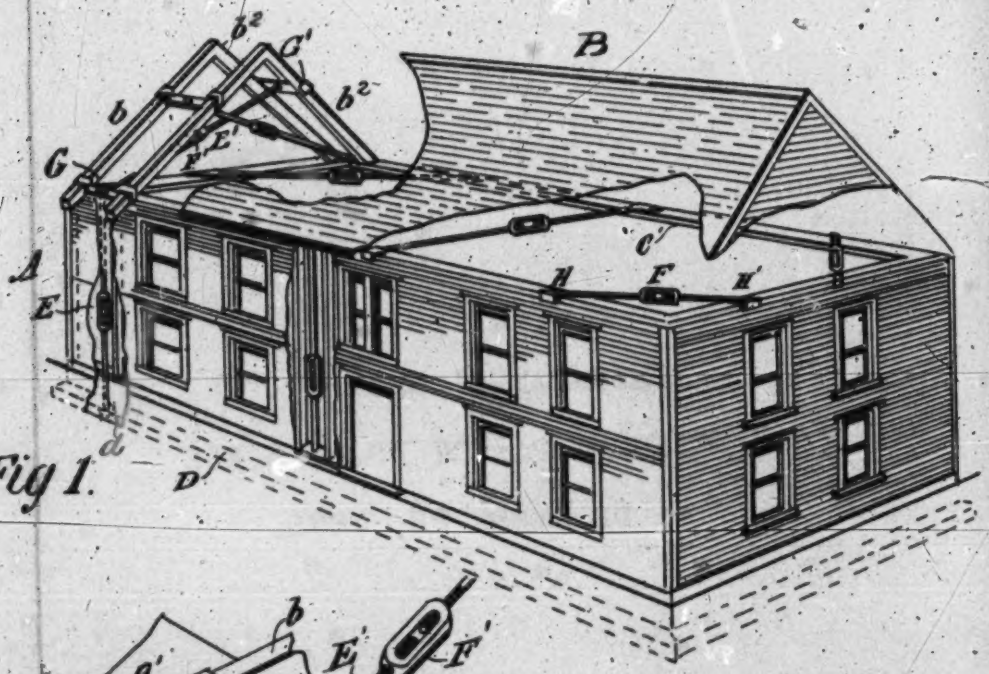


Fig 1.

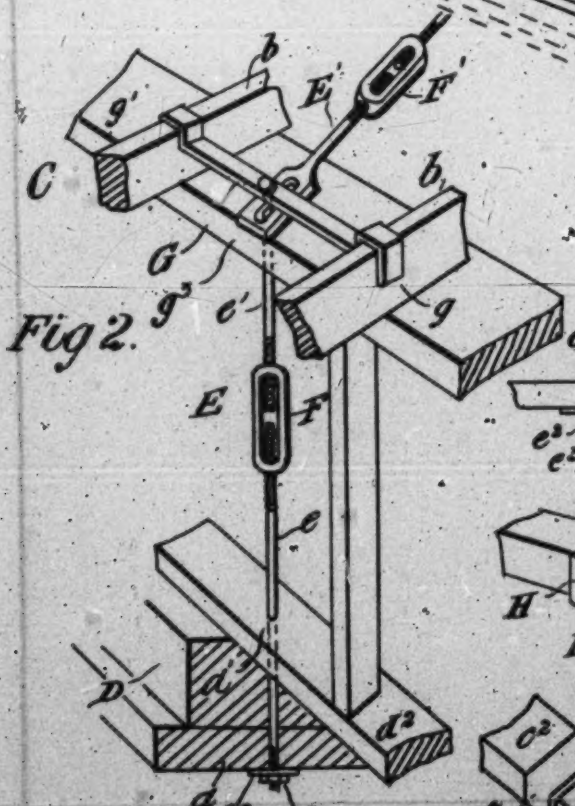


Fig 2.

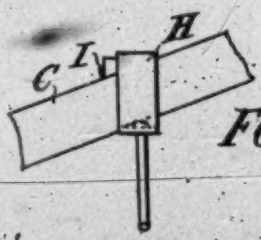


Fig 4

Fig 5.

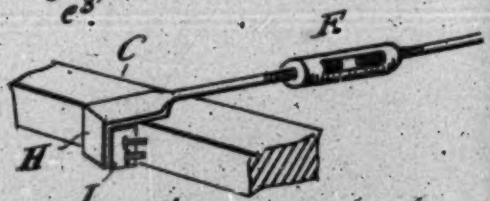


Fig 3.

Fig 6

WITNESSES:

S. Z. C. Hanson

R. E. Hutton

INVENTOR

Charles Delahunt.

Richards & Manning

ATTORNEYS

United States Patent Office

Charles Delahunt, of Olathe, Kansas

Means for Rigidly Connecting Parts of Buildings with Each Other and with the Foundations

Specification Forming Part of Letters Patent No. 573,452, Dated December 22, 1896

Application Filed August 26, 1896. Serial No. 604,039. (No Model)

To all whom it may concern:

Be it known that I, Charles Delahunt, a citizen of the United States, residing at Olathe, in the county of Johnson and State of Kansas, have invented certain new and useful Means for Rigidly Connecting the Parts of a Building with each Other and also with the Foundation; and I do hereby declare that the following is a full, clear, and exact description of the invention, such as will enable others to make and use the same, reference being had to the accompanying drawings, forming a part of this specification.

The object of my invention is to give rigidity to the walls and roof of a building and prevent removal from the foundation, spreading of the walls, or the unroofing of the building by the action of the wind; and it consists in the novel means hereinafter fully described, and specifically pointed out in the claims.

In the drawings, Figure 1 is a view in perspective of a building and its foundation, showing the footing, also showing portions of the side and roof of the building broken away and the improved securing devices for the building in position. Fig. 2 is a detail view in perspective of a portion of the wall-plate and portions of the ends of the rafters supporting the roof secured to the plate, also showing the sill of the building and wall-stud, also the portion of the footing at the foundation and the securing devices connected with the rafters and the footing and also connected with the wall-plate and the rafters. Fig. 3 is a detail view of the securing device at the angle of the wall-plates, showing a portion of the wall-plate and the shoe and its wedge.

Fig. 4 is a detail plan view of a portion of the wall-plate and shoe, showing the wedge. Fig. 5 is a detail view of a portion of the footing, showing the lower end of the connecting-rod and the plate and nut on said end of said rod. Fig. 6 is a detail view of a portion of the wall-plate, showing a modification of the lower end of the rafter-securing rods.

Similar letters of reference indicate corresponding parts in all the figures.

A in the drawings represents a two-story frame building.

B is the roof, and *b* b^2 the rafters.

C is the wall-plate which supports the rafters on one side of the building, and C′ is the wall-plate upon the other side.

D is the foundation-wall for the building, and *d* is the lowest course of stone in the foundation or "footing," which is usually wider than the courses above and extends on the outer side of wall D at a considerable distance outwardly from the outer vertical side of the wall and the same distance from the inner side of the wall. In carrying out my invention a vertical opening *d*′ is made in said footing *d* at the desired point, in which is inserted the lower end portion of a connecting-rod E, having separate parts *e* *e*′. Upon the under side of the footing *d*, beneath the opening *d*′, is a flat plate e^2, which has a perforation registering with the opening *d*′ in the footing *d*, and through which perforation the lower end of said rod *e* extends. Said lower end of the portion *e* of rod E is provided with a screw-thread, and upon said end, beneath the plate e^2, is fitted a nut e^3.

The upper end of the portion *e* of the rod E is provided with a right-hand screw-thread, and to said end is fitted one end of a turnbuckle F. The lower end of the portion *e*′ of rod E is provided with a left-hand screw-thread, and said lower end is fitted to the upper end of the turnbuckle F. The rod E extends upwardly within the foundation-wall D, thence through the sill *d* and wall-plate C to a position a short distance beneath the upper edges of the rafters *b* *b*, outside of plate C and equidistant from two separate adjacent rafters.

To the upper end of portion *e*′ of rod E is rigidly attached a flat bar G. One end of bar G extends in one direction to the side of one of the rafters *b* and is bent upwardly

at right angles to the upper surface of the rafter, thence extended across the rafter and bent downwardly on the other side of the rafter, forming a U-shaped hook *g*. The other end of the bar G extends to the side of an adjacent rafter *b* and is extended over said rafter in precisely the same manner as described of the hook *g*, forming a hook *g'*. Upon the other side of roof B and to the upper surface of rafters b^2 b^2, which are directly opposite the rafters *b b* and a short distance below the apex or ridge of the roof B, is placed a cross-bar G', which is precisely the same as the bar G and connected with the said rafters in the same manner as described of said bar.

To the bar G' is connected one end of a rod E', which is separable in two parts, as described of bar E, and adjustably connected with a buckle F', which is the same as buckle F. The other end of rod E', opposite to that connected with the bar G', is flat and is provided with a slot *g'*, through which slot is passed the upper end of rod E. Upon the other side of the building is a clamping device extending from the foundation to the top wall-plate, as described of the rod E and bar G, and a clamping device extending from the wall-plate C' to the rafters *b b* in the same manner as described of the rod E' and bar G', the rod E' crossing the line of rod E and constituting a double strut to the roof.

In order that the frame of the building may not be swayed, particularly at the corners, a rectangular-shaped stirrup H is fitted around the wall-plate C at a point a short distance from one corner on one side of the building, and a stirrup H', which is the same as stirrup H, attached to the wall-plate on the end of the building and at the same corner. To the stirrup H is connected rigidly one end of a separable rod H', which separable parts are connected with a swivel in the same manner as described of rod E. The other end of the rod is connected with the stirrup H', so that in the turning of the swivel the tension is increased or decreased upon the stirrups. In order to give the part of the stirrup which bears against the inclined outer edge of the wall-plate a firm bearing, a wedge I is inserted between the outer edge of the wall-plate and the sides of the stirrup adjacent thereto. In connecting the wall-plate with the foundation the rod E passes between adjacent studs and

within the siding of the walls in a frame building, so that a portion of the siding may be removed for the purpose of adjusting the tension of the bolt B by operating the swivel.

Instead of having the rod E inside of the foundation the lower portion of the rod may be carried without the wall during construction and the upper end extended beyond the wall-plate. In brick construction the upper portion of the rod is extended between the separate courses of brick and a space left in the wall for the turnbuckle to be reached and operated. A space may be left extending downwardly between the courses of brick to the turnbuckle and the upper end portion of the rod connected with the turnbuckle at any time the safety appliance is required to be employed. The rods connected with the rafters near the apex of the roof may be connected also with bar G, if preferred. In the contraction of the metal, however, allowance is made in the plan as shown in Fig. 1 to meet the change in position of the bar G′ on the rafters, the bar being permitted to move a slight distance.

My invention is designed to obviate the danger of removal of buildings from their foundations in wind-storms and also the unroffing of buildings, as in the majority of cases the roofs are carried away without further damage.

The devices applied at different parts of the building give solidity to the structure and increase the element of safety.

In Fig. 6 I have shown the end of Rod E′ provided with a head e^4 to engage with the wall direct instead of the slotted plate.

Having fully described my invention, what I now claim as new, and desire to secure by Letters Patent, is—

1. A device for securing buildings to their foundations, consisting of a rod having separate adjustably-connected parts adapted to be secured to the foundation, and a cross-bar at the end of the rod connected with separate rafters for the purpose set forth.

2. A device for securing buildings to their foundation consisting of a rod having separate adjustably-connected parts, one end of one of said parts having a right-hand screw-thread, and one end of the other part having a left-hand screw-thread and a turnbuckle connected with said

ends of said separate parts of said bar, a plate at one end of said rod and a cross-bar at the other end, having bent ends adapted to engage separate rafters of the building for the purpose described.

3. In buildings the combination with the walls of said building and the wall-plate and roof-rafters, and also with a footing beneath said building of a bar for connecting adjacent roof-rafters, and means for connecting said bar with said footing, as and for the purpose described.

4. In buildings the combination with the walls of said building and the wall-plate and roof-rafters, and also with the foundation of a rod having separate adjustably-connected parts, one end of said rod having a cross-bar engaging with the adjacent rafters on one side of said roof, and also connected with the wall-plate on the other side of the roof at the other end and means for connecting the wall-plate and the foundation as set forth.

5. In buildings the combination with the oppositely-pitched roof-rafters of said building and the wall-plates supporting said rafters, of cross-bars on each side of and near the apex of the roof and bearing upon adjacent rafters, and rods connected with the respective cross-bars at one end, having separate adjustably-connected parts and connected with the wall-plate on opposite sides of the roof at the other end, as and for the purpose described.

Charles Delahunt.

Witnesses: H. R. Tomlinson, A. L. Greer.

Minute entry of agreement and submission January 17, 1930, omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

DECREE—Filed April 15, 1930

Appeal from the District Court of the United States for the Southern District of Ohio.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Ohio, and was argued by counsel.

On consideration whereof, it is now here ordered adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby affirmed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

OPINION—Filed April 15, 1930

Before Moorman and Hicks, Circuit Judges, and Anderson, District Judge

MOORMAN, Circuit Judge:

This suit, as originally brought, was for the infringement of eight patents issued to Owen B. Smith, each of which related to apparatus for dog racing. Before trial, and in response to interrogatories filed by the defendant, the plaintiff elected to rely upon but three of the patents, Nos. 1,379,224, 1,507,440 and 1,507,439. The trial court decreed the first and third of these valid but not infringed, and the second invalid as involving only mechanical skill, but if valid, not infringed. In holding patent 1,507,440 invalid for lack of invention, the court was at variance with the District Court of the Eastern District of Louisiana (21 Fed. 2d 366) and the Court of Appeals of the Fifth Circuit (26 Fed. 2d 1016). Two of the patents, Nos. 1,379,224, and 1,507,440, were also litigated in Smith v. Magic City Kennel Club, in the Northern District of Oklahoma, and held by the district judge to be valid and infringed by devices similar to those alleged to infringe in this case. Upon appeal, however, from that decree, the Circuit Court of Appeals, in an opinion not yet reported, reversed the decree, holding that if the patents were valid they were restricted to the specific elements called for in their claims, and as so construed were not infringed.

Claims 1 and 2 of patent 1,379,224 are in issue. These claims call for a combination comprising the following elements: (1) a race course suited for dogs; (2) a casing extending around the outer side of the race course or, as

stated in Claim 2, "on one side," and provided with a longitudinal opening; (3) a mechanical conveyor including a track extending around the race course, and located within the casing; (4) a conveyor or mechanical car operated upon the track and provided with an arm (as called for in Claim 2 "hinged" to the car) extending through the longitudinal opening of the casing in a projecting position over the track, and adapted to carry a lure; and (5) a wheel rotatably mounted on and supporting the arm at the outer end thereof. It is stated for appellant in argument that the real invention disclosed by these claims is a "horizontal lure carrying arm attached to a traveling propelling operative motor or mechanism, and an arm extending outwardly, close to the surface of the race course, through a continuous longitudinal slot or opening in the housing which conceals such mechanism from the racing dogs."

It would be difficult to give to these claims the breadth of interpretation that is thus insisted upon without ignoring entirely the record in the Patent Office. The file wrapper shows that claims broad enough to cover such interpretation were made in the original application but were rejected by the Patent Office and, as amended, again rejected. These rejections, with the resulting limitations on the claims allowed, were brought about upon references to earlier patents in the same art. All of these earlier patents were for mechanical contrivances for carrying a lure in front of racing dogs. None of them used a horizontal arm, and in none of them was the lure mounted upon the end of the arm. In Everett 1,052,807 the lure was attached to the end of a vertical arm which passed through the slot of an underground housing. Smith 1,038,504, also had a vertical arm passing through a slot in an underground casing in which the motor car and tracks were located. Walsh 611,876 had a conveyor track above ground separated from the race course by a fence, with a motor carrying a transverse pole or rod which extended over the fence and partially over the track. To the end of this rod he attached a rope or another rod to the end of which there was attached a support for the lure.

These patents sufficiently show that Smith was not a pioneer in the art. His device is perhaps more effective and better than any of the earlier devices. Whether it amounts to invention or was nothing more than the exer-

cise of a high order of mechanical skill we need not determine, for in our opinion appellees' device does not come within the limitations which Smith imposed upon his claims in the Patent Office proceedings. It is contended for appellees that there is lack of analogy between their device and the patentee's in the location of the conveyor tracks, and it appears that there would be difficulties in adapting appellant's form of apparatus to a track located, as appellees' is, within the race-course. We pass that question by, though, as less important than the rotatable mounted wheel and the hinged-arm connection called for in appellant's claims. It is apparent that the rotatable wheel supporting the arm at the projecting end thereof is an essential element of both of the claims. This is entirely absent from the appellees' structure. Again the hinge connecting the horizontal arm with the car, as specified in Claim 2, and as used in appellant's practical device, is absent from appellees' construction. This hinge, because of the support given the end of the arm by the wheel, the circular shape of the race course and the location of the mechanical conveyor on the outer side thereof, performs a substantial function in giving to the horizontal bar the flexibility that is needed to take up the vibrations that result from the operation of the car. If these two elements were eliminated from Smith's combination it would be obviously inoperable for the purpose for which it was designed. The equivalent of neither of them is found in appellees' device. As both were specifically relied upon by the patentee in his specifications and claims and were regarded by the Patent Office as essential to avoid references in the prior art, they are to be treated as limitations. D'Arcy Spring Co. v. Marshall, 259 Fed. 236 (6 C. C. A.); Lakewood Engineering Co. v. Stein, 8 Fed. (2d) 713 (6 C. C. A.); I. T. S. Co. v. Essex Co., 272 U. S. 429. As so limited, the claims are not infringed by appellees' device.

The trial court was also right in dismissing the claim for infringement of Patent No. 1,507,440. Claim 1 is typical. It calls for (1) a housing for covering tracks; (2) cars having laterally extending arms operated upon the track; (3) the combination of posts set in the ground at the side of the track; (4) timbers attached to the posts to form a frame; (5) boards attached to the timbers and posts to form a continuous enclosure above the track, and having a

continuous opening on one side of the housing adapted to permit extension of a laterally extending arm therethrough; and (6) truss rods attached to the closed side of the housing adapted to support the side of the housing above the continuous opening. The composite result of these elements is a circular track enclosed in a housing which has a longitudinal opening in one side to admit a laterally extending arm therethrough. All of the elements in this claim were old and in common use. It was not invention to construct a wooden housing over a circular track with a longitudinal opening in the side next to the track. The longitudinal opening would seem to be anticipated by Bertram, No. 729,120, and the element of adjustable supports or truss rods is but a step that would be obvious to any skilled builder who, having the same problem to deal with, would resort to truss rods or some other familiar method for constructing supports for that part of the housing which could not be supported from the ground. Besides, appellees' supports are not adjustable, and whether they are or are not equivalent in other respects to the truss rods that appellant uses, both were well known to the construction art, and neither could bring invention to the combination.

Patent No. 1,507,439 has but a single claim, which calls for a combination of elements forming a housing or box-like structure in which there are separate compartments, the walls of which are formed of wire mesh partially covered with fabric, each having a rear door, but with a single front door which can be raised upwardly and outwardly by springs. The history of this patent shows that the claims as originally filed were rejected upon reference to several earlier patents, among them Andrew 543,762, and Stitzer 878,029. After these rejections the claims were cancelled and a new claim inserted, then followed a rejection and cancellation of this claim, and the presentation of another which, after amendments upon objection, was allowed as the claim in suit. From this history it is evident that if the patent is valid it must be given a relatively narrow range. The particular form of spring support and the wire mesh partitions partially covered with fabric are the two features of the device that are said to be novel and highly useful. We think they as well as the other elements are but forms of construction that might be thrown together,

if occasion demanded or necessity arose, by any one who is skilled in the building art. Furthermore, appellees omit from their combination the wire partitions and the form of spring support used by appellant, and this would avoid infringement even if the patent were valid.

The decree below is affirmed.

Petition for rehearing, covering 33 pages, filed May 14, 1930, omitted from this print. It was denied, and nothing more by order June 12, 1930.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—Filed June 12, 1930

The petition for rehearing of this cause is hereby denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR STAY OF MANDATE—Filed June 17, 1930

Now comes the appellant herein, Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, and represents that on April 15, 1930, this honorable court rendered and filed its decision herein affirming the judgment of the trial court below; that within thirty days thereafter the appellant duly filed a petition for rehearing, which petition was overruled on the 13th day of June, 1930; that the appellant believes the decision rendered in this honorable court is in conflict with the decision heretofore rendered by the United States Circuit Court of Appeals for the fifth circuit, which is reported in 26 Fed. (2d), 1016, and affirms the decision of United States District Judge Louis H. Burns, District Judge for the eastern district of Louisiana, whose opinion is reported in 21 Fed. (2d), 366, and which opinion held valid the same patents which were the subject of litigation in this honorable court; that it is the intention of appellant to institute immediately proceedings for certiorari in the United States Supreme Court, and that the

requisite papers for submission to the Supreme Court are in process of preparation.

Wherefore your petitioner prays for a stay of the mandate of this court in the above entitled case until this cause shall be finally determined in the Supreme Court, either by its refusal to grant the writ of certiorari, or, if the writ be granted, then until the final decision is made in said Supreme Court.

John E. Sater and E. Howard McCaleb, Counsel for Hannah M. Smith, Administratrix of the Estate of Owen P. Smith.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING MANDATE—Filed June 27, 1930

Ordered, that motion to stay mandate herein pending application to the Supreme Court for writ of certiorari is hereby granted and the mandate is stayed for thirty days from this date,—provided that, if within such thirty days, the applicant shall file with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition, record and brief have been filed and that proof by affidavit of notice thereof under paragraph 3 of rule 38 of the Supreme Court has been given, the stay shall continue until the final disposition of the case by the Supreme Court. Unless this condition is complied with within such thirty days or any extension thereof made by the Court or any judge thereof or, if the condition is complied with, then upon the filing of copy of an order denying the writ applied for, the mandate shall issue.

Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is

granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 35,237. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 315. Hannah M. Smith, administratrix of the estate of Owen P. Smith, petitioner, vs. Springdale Amusement Park, Limited, Paul M. Williams and Gerald Brown. Petition for a writ of certiorari and exhibit thereto. Filed July 21, 1930. File No. 35,237.

FILE COPY

FILED
JUL 21
CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 315

HANNAH M. SMITH, Administratrix of Estate of Owen P. Smith,

Petitioner,

versus

SPRINGDALE AMUSEMENT PARK LIMITED, PAUL M. WILLIAMS and GERALD BROWN.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

JOHN E. SATER,
E. HOWARD M'CALEB,
Counsel for Petitioner.

MONTGOMERY-ANDREWS PRINTING CO. INC., 430-438 CHARTRES, N. O.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. ____

HANNAH M. SMITH, Administratrix of Estate of Owen P. Smith,

Petitioner,

versus

SPRINGDALE AMUSEMENT PARK LIMITED, PAUL M. WILLIAMS and GERALD BROWN.

PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

The petition of Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, respectfully shows to this Honorable Court:

—A—

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is an equity suit for infringement of petitioner's patents relating to devices used in dog racing amusement (R. p. 1 to 13, R. p. 60), being Patent No. 1,379,224, claims 1 and 2, (R. pp. 3, 60, 186 to 191); Pat-

ent No. 1,507,439, Claim 1, (R. pp. 4, 60, 222 to 224) and Patent No. 1,507,440, claims 1, 2, 3, (R. pp. 5, 60, 254 to 256). As the reasons for allowance of the writ are concerned with these three patents we omit reference to other patents withdrawn (R. p. 60) and to those parties defendant (other than respondents) who were dismissed (R. p. 100). Among other matters not material or not decided, respondents answered, denying validity of these patents and, if valid, they denied infringement (R. pp. 21, 23, 25, 26, 27, 31, 32, 36, 37, 38, 40, 41, 45). After hearing (R. p. 68 to 88) the District Judge decided that Claims 1 and 2 of Patent No. 1,379,224, for a dog racing device were valid but not infringed (R. p. 100); that Patent No. 1,507,440 for a housing for concealing tracks and cars having a laterally extending arm in a dog racing device was invalid but if valid was not infringed (R. p. 100) and Patent No. 1,507,439 for starting cage for racing dogs is valid but not infringed (R. p. 100) and accordingly dismissed the bill (R. p. 100). Petitioner thereupon appealed to the United States Circuit Court of Appeals for the Sixth Circuit (R. p. 101 to 107) and, after hearing, said Sixth Circuit Court of Appeals affirmed the aforesaid decision of the District Court (R. p. 368). Petition for rehearing was timely filed on May 14, 1930 (R. p. 373), and, on June 12, 1930, the petition for rehearing was denied. (R. p. 407).

(a) Summary as to Patent No. 1,379,224 Claims 1 and 2.—For brevity sake, Claim No. 1 substantially describes the invention. In a dog racing amusement, it claims (a) a race track suited for dogs, (b) a casing extending around the outer side of the race course and provided with a longitudinal opening; (c) a mechanical con-

veyor including a track extending around the race course and located within the casing; (d) a conveyor car mechanically operated upon said track and provided with an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure; (e) and a wheel rotatably mounted on and supporting the arm at the projecting end thereof. (R. p. 191, lines 36 to 49). Claim No. 2 is substantially the same as Claim No. 1 save the omission of a casing and a longitudinal opening in said casing, substituted by a covered rail track, and save by the addition of a platform supported by the horizontal lure carrying arm and a lure on the platform (R. p. 191, lines 50 to 60). In his specifications, the patentee states that the invention consists of the arrangement and combination of parts described and claimed and that it is not restricted to the exact details of construction disclosed herein (R. p. 189, lines 25 to 34), and that the arm is hinged to the conveyor car and supported at its outer end by a wheel 28 rotatably mounted (R. p. 190, lines 9 to 17). The essential facts are not in dispute; comparison of the two claims with respondents' device (R. pp. 71, 72, 73, 75, 76, 77, 78, 117, 140, 147, 148) shows an appropriation of the claim except that respondent's lure carrying arm is pivoted to the car or rigidly supported by super-imposed disc welded to the arm at the connecting end of the arm in lieu of the wheel support at the projecting end.

(b) Summary as to Patent No. 1,507,440 and the Claims Thereof.—In a housing for covering tracks and cars having laterally extending arm operated on said track, the combination of (a) posts set in the ground at the sides

of said track, (b) timbers attached to said posts to form a frame, (c) boards attached to said timbers and posts to form a continuous enclosure above said track, and having a continuous opening in one side of said housing adapted to permit extension of the laterally extending arm there through; (d) and truss rods attached to the closed side of the housing adapted to support the side of said housing above the said continuous opening. (R. p. 255, lines 97 to 110). In his specifications, the patentee says, that the invention is not restricted to the exact details of construction (R. p. 255, lines 24 to 34); and claims 2 and 3 provided adjustable stay rods and adjustable screw threaded stay rods (R. pp. 255, 256) instead of the truss rods of Claim No. 1. The essential facts are not in dispute; comparison of the Claim No. 1 with respondents' housing device (R. pp. 71, 73, 75, 76, 117, 140), shows a literal translation of Claim No. 1.

(c) Summary as to Patent No. 1,507,439, for Starting cage.—The single claim of this patent substantially describes the invention. In a starting cage for racing dogs (1) a frame comprising a box like structure divided into a plurality of compartments and comprising walls formed of wire mesh partially covered with fabric, (2) individual rear doors for each of the compartments and (3) a single front door hinged at its upper end to the top walls of the frame, (4) divergent inclined members secured to the top of the said frame and (5) extending upwardly and outwardly beyond the face of the front door and having their outer ends in the plane of the side walls of the box like structure, (6) springs secured to the outer ends of said inclined members and to the door and lying in the plane of

the hinges, (7) and a latch at the bottom of the cage for co-action with the lower edge of the front door to hold the front door normally closed against the tension of said springs, said springs adapted to raise the front door upon release of the latch. (R. pp. 223, 224). In his specifications the patentee states that the invention consists of the arrangement and combination of parts as thereinafter described and claimed, and that it is not restricted to the exact details of construction disclosed herein (R. p. 223, lines 25 to 34); and he further states that it will be apparent that other means may be employed for raising the front door (6) and other means may be employed to protect the dogs against injury in the stalls, without departing from the spirit of (my) said invention (R. p. 223, lines 79 to 83. The essential facts are not in dispute. Comparison with this single claim of the patent with respondents' starting cage (R. pp. 71, 72, 73, 75, 76, 118, 140 photographs 3, 4, 5) shows an appropriation of the claim, except that respondents' cage has partitions formed of plain boards instead of wire mesh partially covered with fabric, parallel instead of divergent inclined members, and elastic rubber springs instead of the springs broadly called for in the claim.

Short statement of matter involved.—As to patent No. 1,379,224, the matter involved is (1) whether or not respondents' rigid support of the horizontal lure carrying arm is equivalent to the movable support of that arm as described and claimed in the patent and (2) whether or not the claims are expressly limited, either by the language of the description or claims or by any disclaimers, estoppels or abandonment in the patent office proceedings as to that

form of support of the horizontal lure carrying arm, and (3) whether or not the respondents have infringed the claims.

And further the question is (1) whether this patent is of primary character, or if not, whether it is of relatively high generic rank or of major grade, or whether it has substantially advanced the art, entitling the patentee (petitioner) in either case, to a liberal construction and to a range of equivalents measured by the leap or distinct step made over the prior art; (2) whether either or both of these claims are restricted to the outfield outer side of the race course and to the movable (wheel) support of the horizontal lure carrying arm; (3) whether infringement is avoided by placing the apparatus on either side of the race course and by the substitution of a rigid for the movable (wheel) support; (4) whether the essence of the invention is the horizontal lure carrying arm, or the lure carrying arm extending through a continuous longitudinal opening of the casing in a projecting position over the track; (5) whether or not, the movable (wheel) support of said arm pertains to the working environment of the aforesaid inventive step; (6) whether the patentee is deprived of equivalents of such accessorial element of support of the arm as also the location of the apparatus described and claimed in his preferred form, there being no limitation imposed by the prior art, the specifications, or the patent office proceedings, and no disclaimer of equivalents therefor expressed therein or implied by the prior art.

As to patent No. 1,507,440, and the claims thereof, the matter involved is whether or not this patent is invalid either for want of invention or novelty. And if valid,

whether or not respondents' copy of Claim No. 1 avoids infringement, or as to Claims 2 and 3 whether or not the changes involving adjustability or not of the stay rods avoid infringement.

As to patent No. 1,507,439, and the single claim thereof, the matter involved is whether or not this patent is valid, and if valid, whether or not the substitution of wooden boards for wire mesh partitions, parallel for divergent inclined members and elastic rubber springs for "springs" avoid infringement.

And further, whether or not the distinguishing characteristic of this the first and only starting cage for racing dogs, by reference for the sake of argument only to the horse starting art, is the hinging of the exit door to the top walls of the frame with inclined members secured to the top of the frame extending upwardly and outwardly co-acting with tension springs for quick movement of the hinged exit door upon release of the latch; (2) whether or not wire mesh forming the partition walls are accessorial to the device or its operation, and their primary function for separating the dogs in the cage changed or impaired by the substitution of wooden boards, (3) whether or not in view of the special reservation contained in the four corners of the patent, the expressly stated preferred form and kind of material for separation of the stalls with no change, (except possibly by impairment) of function operation and result has been disclaimed in the patent office proceedings or otherwise resolved into an express limitation; (4) whether or not the expressly stated preferred form of springs or spring support claimed, finds equivalency in

respondents' form of springs or spring support, with no substantial change in function, operation and result.

—B—

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

(1) As to Patent No. 1,379,224, Claims 1 and 2. The decision of the Sixth Circuit Court of Appeals denying infringement is in conflict with the decision of the Fifth Circuit Court of Appeals on the same matter (Rule 38, Sec. 5 [b]). See *American Electric Rabbit Racing Association, George W. Heintz and others, versus Smith, 26 Fed. (2nd Series), 1016,* wherein this patent and the infringing device described in the opinion of the District Court in *Smith v. American Electric Rabbit, etc., et al., 21 Fed. (2nd Series), 366,* are referred to and the "conclusions" of the District Court were agreed to by the Fifth Circuit Court of Appeals in its decision. The main conclusion in *Smith v. American Electric Rabbit, etc., et al., 21 Fed. (2nd) 366,* so agreed to in *American Electric Rabbit, etc., et al., v. Smith, 26 Fed. (2nd), 1016,* is, that the location of the apparatus at either outer side of the race course and the functions performed by the wheel or movable support of the horizontal-lure-carrying arm are served by the rigid arm, in consequence of which equivalency obtains and infringement not avoided. In the decision of the Sixth Circuit Court of Appeals, that conclusion is to the contrary (R. p. 368). In the decision of the Sixth Circuit Court of Appeals, it is concluded that the scope of each claim is limited to the outfield outer side, as distinguished from the infield outer or left side of the race course, and to a movable support of the horizontal arm, by a self imposed limitation contained in the Patent specifications and

in the Patent office proceedings, whereby the patentee disclaimed all forms of support of the fundamental element of a horizontal lure carrying arm other than the movable support and therefore the form of rigid support averted infringement of the claim (R. pp. 368, 371). The decision of the Fifth Circuit Court of Appeals in agreement with the conclusions of the District Court in *Smith v. American Electric Rabbit Racing Association, et al., 21 Fed. (2nd) 366*, is to the contrary wherein it appears upon consideration of the Patent and the Patent office proceedings *(21 Fed. [2nd]* at *page 368* and at *page 371)* to the effect that "There is nothing to show (his) intention to relinquish to the public all forms in which his invention might be embodied."

In each case the validity of the Patent is assumed by the Courts, the conflict in each decision being, as to the scope of the claims, the documentary interpretation arising from the face of the patent and the Patent Office record, and infringement of the claims. The infringing device described in the Fifth Circuit Court of Appeals decision and the infringing device described in this case are substantially identical, both being constructed under patent to Creveling (R. pp. 76, 77, 78, 147, *et seq.), 21 Fed. (2nd) 368, 369*, so that extrinsic evidence is not needed to apply in either of them to the patent specifications and claims, as from a mere comparison of the patented device and the infringing device in each case the conflict of decision is manifest.

(2) As to Patent No. 1,507,440. The decision of the Sixth Circuit Court of Appeals denying the validity of this patent concedes that it is in conflict with the decision

of the Fifth Circuit Court of Appeals upholding its validity in virtue of its agreement in the conclusions of validity as appears from the opinion in *Smith v. American Electric Rabbit, etc., 21 Fed. (2nd) 366*, at *page 373*, (Rule 38, Sec. 5 (b). For the Sixth Circuit Court of Appeals says: "In holding patent No. 1,507,440, invalid for lack of invention, the Court (meaning the District Court) was at variance with the District Court of the Eastern District of Louisiana *(21 Fed. [2nd] 366)* and the Court of Appeals of the Fifth Circuit *(26 Fed. [2nd] 1016)* (R. p. 369). And the Sixth Circuit Court of Appeals affirms the decree of the District Court (R. pp. 368, 372) which decides that this patent is invalid. (R. p. 100). This conclusion is in direct conflict with that of *21 Fed. (2nd) 366, supra*, at *page 373*, where it is concluded "the file wrapper," etc., "* * * satisfies me that Smith's application of the known principles of his housing device in the art or field of dog racing was a novelty." Manifestly, therefore, the validity of this patent was sustained by the Fifth Circuit, and its validity denied by the Sixth Circuit.

(3) As to Patent No. 1,507,439 and the single claim thereof, the decision of the Sixth Circuit Court of Appeals is in conflict with the decision of the Fifth Circuit Court of Appeals on the same matter (Rule 38, Sec. 5 [b]). The conclusions of the opinion in *Smith v. American Electric Rabbit, etc., 21 Fed. (2nd) 266, supra*, incorporated in the decision of the Fifth Circuit Court of Appeals in *American Electric Rabbit Racing, etc., v. Smith, 26 Fed. (2nd) 1016, supra*, are substantially to the effect that the defendants in that case have infringed this patent, whereas in affirming the decree of the District Court deciding that the patent is valid but not infringed (R. p. 100), the Sixth

Circuit Court of Appeals has decided contrary to the Fifth Circuit decision.

In the infringing device of the Fifth Circuit case and in this case, the ordinary wooden board partitions are substituted for the wire mesh partitions of the claim, aeroplane shock rubber or elastic rubber springs are substituted for "springs", the difference being as to the change of location of the inclined members from divergent to parallel. The decision of the Sixth Circuit Court of Appeals in affirmance with the District Court is, that these substitutions and changes avoid infringement (R. pp. 100, 368, 372), whereas the decision of the Fifth Circuit case is to the contrary. See *Smith v. American Electric Rabbit, etc., 21 Fed. (2nd), 366*, at *pages 374, 375, 376*, agreed to by the Fifth Circuit Court of Appeals in *21 Fed. (2nd), 1016, supra*, assuming the validity of the claim in view of the prior art and patent office proceedings *(21 Fed. [2nd] 374, 375)*, that the plaintiff (petitioner here) in that case, was entitled to equivalents and that the substitution of wooden board partitions for wire mesh partitions and of elastic rubber or shock rubber springs in the infringing starting cage in that case, and a change in location of the inclined members, were equivalents and obviously designed for the purpose of evading the spirit of the invention claimed, involving impairment of function and so colorable as to constitute infringement.

In each case, the devices charged as infringements are substantially identical, save that in the Fifth Circuit case there was some question as to whether these inclined members had their outer ends in the plane of the side walls, whereas in this case they are parallel and this im-

material difference was considered and decided by the Fifth Circuit Court of Appeals as follows: "assuming that they were, however, my conclusion is that, whatever difference there might be in location, position, or length of the divergent members, they were for all practical purposes identical with those of Smith, and, under the authorities already considered, the change of position or location of an element, which is substantially the same, functioning in substantially the same way to obtain the same result, cannot avert a charge of infringement" *(21 Fed. [2nd] 376)*.

WHEREFORE, your petitioner respectfully prays that a writ of *certiorari* be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for Sixth Circuit, commanding that court to certify and to send to this court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 5335, *Hannah M. Smith, Administratrix of Estate of Owen P. Smith, Appellant, v. Springdale Amusement Park Limited, et al., Appellees*, and that the said decree and judgment of the United States Circuit Court of Appeals for the Sixth Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

HANNAH M. SMITH, ADMINISTRATRIX OF ESTATE OF OWEN P. SMITH, DECEASED.
By JOHN E. SATER,
E. HOWARD M'CALEB,
Counsel for Petitioner.

BRIEF IN SUPPORT OF FOREGOING PETITION FOR CERTIORARI.

—I—

The Opinions of the Courts Below.

(a) Opinion of District Court in *Smith v. Springdale Amusement Park, Limited, et al.*, see Pamphlet No. 1, *39 Fed. (2nd) p. 92;* see also R. p. 89 (b), Opinion U. S. Circuit Court of Appeals, Sixth Circuit, in *Smith v. Springdale Amusement Park, Limited, et al.*; No. 5335 of the docket of said Court is dated April 15, 1930, not yet reported, and copied in R. pp. 368 to 372.

—II—

Jurisdiction.

(a) Statutory provision believed to sustain the jurisdiction is Judicial Code, Section 240 (a), as amended by Act Congress February 13, 1925, Chap. 229, 43 Stat. 936; (b) date of decree sought to be reviewed is April 15, 1930 (R. p. 368), rehearing denied June 12, 1930 (R. p. 407); date of filing petition for certiorari, see filing date stamped by Clerk of this Court on cover of petition for certiorari; (c) nature of case, is an equity suit for infringement of claims 1 and 2 of Patent No. 1,379,224, (R. pp. 1, 3, 60, 186 to 191); Claims 1, 2, 3 of Patent No. 1,507,440 (R. pp. 1, 5, 60, 254 to 256); Claim 1 of Patent No. 1,507,439 (R. pp. 1, 4, 60, 222 to 224); (d) Rulings below: The District Court ruled that the above stated claims of Patent No. 1,379,224 were valid but not infringed (R. p. 100), that Patent No. 1,507,440 was invalid (R. p. 100), and that the single claim of Patent No. 1,507,439 is

valid but not infringed (R. p. 100). On appeal therefrom, the Sixth Circuit Court of Appeals affirmed the ruling. (R. p. 368); (e) Cases believed to sustain the jurisdiction *Mangum Import v. Coty, 262 U. S. 159; Sanitary Ref. Co. v. Winters, 280 U. S., p. 30.*

—III—

Statement of the Case.

A statement of the case has been given under heading A of the petition for certiorari. Supplemental thereto it may be noted, that with the exception of the apparatus represented by Patent No. 1,507,439, the apparatus represented by Patent No. 1,379,224 and No. 1,507,440 in this case and the case of *Smith v. American Electric Rabbit*, etc., Fifth Circuit Court of Appeal, and the case of *Smith, Petitioner, v. Magic City Kennel Club, Inc., et al.*, No. 77, October term, 1930, of the docket of this Court in which the petition for certiorari has been granted under No. 809, October term, 1929, are substantially identical. Infringement of starting cage Patent No. 1,507,439 is not involved in *Smith, Petitioner, v. Magic City Kennel Club*, No. 77, October term, 1930, certiorari granted, but infringement thereof was presented and decided favorably to petitioner in the Fifth Circuit case *(26 Fed. [2nd] 1016 and 21 Fed. [2nd] 366)*, and decided adversely to petitioner by the Sixth Circuit Court of Appeals (R. p. 368); the starting cage in both cases being substantially identical, save that in the Fifth Circuit case two of the inclined members were divergent and one non-divergent, whilst in this case these inclined members are non-divergent. See also *sub nom Heintz and American Electric Rabbit Racing Association*

v. Smith, 278 U. S. 646, No. 449, October term, 1928, U. S. Supreme Court on petition for certiorari, pp. 142, 143, 145, 60, 61, 67 to 70, 72. For File Wrapper see also same record, p. 209, 210.

—IV—

Specification of Errors.

The Sixth Circuit Court of Appeals erred in finding and holding:

(1) That Patent No. 1,379,224, Claims 1 and 2 are not infringed by respondents.

(2) That Patent No. 1,507,440 is invalid, and in failing to find and hold that said Patent is valid and the claims thereof infringed by respondents.

(3) That Patent No. 1,507,439 is not infringed by respondents; and in refusing to hold that said patent is valid and infringed.

—V—

Argument.

Summary of Argument.—(1) As to Patent No. 1,379,224, Claims 1 and 2. Considering that respondents' apparatus and the apparatus described in *American Electric Rabbit, etc., et al., v. Smith, 26 Fed. (2nd) 1016*, and *Smith v. American, etc., 21 Fed. (2nd) 366*, are substantially identical and in each apparatus the respondents in this case and the defendants in the Fifth Circuit Court of Appeals case have placed the apparatus on the infield or left outer-side of the race course and substitute a rigid for

the movable support of the arm described and claimed in the patent, it is urged that:

Point A. The decision below is contrary to and in conflict with the prior decision of the Fifth Circuit Court of Appeals on the same matter.

(2) As to Patent No. 1,507,440, considering that the respondents' housing is substantially identical with the housing described in the Fifth Circuit Court of Appeals case, it is urged that:

Point B. The decision below is contrary to and in conflict with the decision of the Fifth Circuit Court of Appeals.

(3) As to Patent No. 1,507,439, Claim No. 1, considering that respondents' starting cage and the starting cage described in *American, etc., v. Smith, 26 Fed. (2nd)*, and *Smith v. American, 21 Fed. (2nd) 366*, are substantially identical, and in each apparatus, (except as to the location of the inclined members) respondents in this case and the defendants in the Fifth Circuit Court of Appeals case substituted wooden board partitions for wire mesh partitions and elastic rubber springs for springs called for in the claim, it is urged that:

Point C. The decision below is contrary to and in conflict with the decision of the Fifth Circuit Court of Appeals on the same matter.

Point A.

The decision below is contrary to and in conflict with the decision of Fifth Circuit Court of Appeals on the same matter.

Conclusions of the Fifth Circuit Court of Appeals in *American Electric Rabbit, etc., v. Smith, 26 Fed. (2nd), 1016,* in agreement with *Smith v. American Electric Rabbit, etc., 21 Fed. (2nd) 366,* are as follows: (1) By this Patent, (No. 1,379,224) Smith, patentee, has substantially advanced the art entitling the patent and its claims to a liberal construction and to a range of equivalents commensurate with the scope of his invention *(Smith v. American Electric Rabbit, etc., 21 Fed. [2nd] 366,* at *page 371);* (2) the essence of the invention described and claimed in Claims 1 and 2 is the horizontal-lure-carrying arm extending through the longitudinal opening of the casing in a projecting position over the track. *(Ibid., 21 Fed. [2nd] 366,* at *pages 368, 371, 372);* (3) the location of the apparatus and the form of movable or wheel support of the hinge-mounted horizontal arm are not of the essence of the invention, that no limitation was imposed by the prior art or regarded as essential in the Patent Office proceedings *(Ibid., 21 Fed. [2nd],* at *pages 368, 371),* and no disclaimer of equivalents therefor *(Ibid., 21 Fed. [2nd] 366,* at *pages 370, 371);* (4) that the arm rigidly connected to the conveyor car is the obvious equivalent of the hinged arm supported by a wheel, constituting a formal alteration and a deliberate evasion of the claims *(Ibid., 21 Fed. [2nd] 366,* at *pages 371, 372);* (5) that there is nothing to show his (Smith's) intention to relinquish all forms in which his invention might be embodied. *(Ibid., 21 Fed.*

[*2nd*], at *page 371)*; (6) that the transposition of the apparatus from the outfield outer side of the race course to the infield or left outer side of the race course did not avoid infringement of Claim No. 1, and further that such transposition is provided for in Claim No. 2 *(Ibid., 21 Fed.* [*2nd*], at *pages 369, 370)*; (7) defendants have thereby infringed.

Each and every one of these conclusions are controverted by the decision of the Sixth Circuit Court of Appeals. The said Sixth Circuit bases its conclusion of disclaimer or express limitation on the patent office proceedings or File Wrapper, but fails to point out where the so-called disclaimer or express limitation is to be found, whereas the Fifth Circuit Court of Appeals not being able to discover any disclaimers, estoppels or express limitations anywhere within the four corners of the Patent or the File Wrapper says:

> "A reading of his claim in the light of his specifications does not suggest an intention to restrict himself to the use of the wheel and hinge on the projecting arm, which might well have been rigid instead of flexible as far as function and operation were concerned. **There is nothing** to show his intention to relinquish to the public all forms in which his invention might be embodied."
>
> *21 Fed. (2nd), at page 371*; see also *page 368.*

It is believed inappropriate at this time to point out the errors in the decision below. Albeit, comparison between the structure described in the decisions of each Fifth and Sixth Circuit Courts of Appeal, evidences such an identity as to call for review by certiorari in order to remove the conflict.

Point B.

The decision below holding that Patent No. 1,507,440 is invalid is contrary to and in conflict with the decision of the Fifth Circuit Court of Appeals holding that this patent is valid and the claims infringed.

Adherence to Rule 38, Sec. 2, enjoins repetition in disclosing the manifest conflict, aside from the confession of variance by the Sixth Circuit Court of Appeals, all as set forth in the petition and reasons for allowance of the writ. (See under heading of Reasons for allowance of the writ; see also R. pp. 100 and 368, 372; see also *Smith v. American, etc., 21 Fed.* [*2nd*], *at page 373).*

Point C.

The decision below as to the single claim of Patent No. 1,507,439 is contrary to and in conflict with the decision of the Fifth Circuit Court of Appeals on the same matter.

As to this starting cage patent, the decision of non-infringement by the Court below on the substitution of wooden board partitions for wire mesh partitions, of non-divergent for divergent inclined members in the plane of the side walls, and of elastic rubber springs for springs, seems to be predicated on an undisclosed express or implied limitation to be searched for in the patent itself, the file wrapper and the prior art from which it is deduced as to these elements "that if the patent is valid it must be given a relatively narrow range." But aside from the

patent specifications and special reservation therein against form, material and location, the prior horse-starting art (assuming *arguendo*, that it is analogous to the dog-starting art) and the File Wrapper, each and all of which is believed to overthrow the Sixth Circuit decision, the Fifth Circuit Court of Appeals by adopting the conclusions in *21 Fed. (2nd), supra*, at *pages 374, 375, 376*, is decidedly at variance with the Sixth Circuit, in that these trivial changes are obvious equivalents and colorable evasions. Reduced to their final analyses, these two decisions are clearly in conflict; in one, the elements of the claim are to be held verbally definitive and no equivalents allowable; in the other, a reasonable range of equivalents is permitted particularly as to these accessorial elements described and claimed in the patentee's expressly stated preferred form of location and material with no substantial change in function, operation and result and pertaining solely to the working environment of the inventive step of a single front door hinged at its upper end to the top walls of the frame in combination with inclined members secured to the top of the frame and extending upwardly and outwardly. And furthermore, inasmuch as each decision rests upon the face of the patent in connection with facts and documentary evidence of such a nature and effect as not to be reasonably disputed, the conflict invites a question of law, and which of the two decisions is correct.

Singer v. Cramer, 192 U. S. 265, 275.

Sanitary Ref. Co. v. Winters, 280 U. S. 30.

The novelty of this patent was discussed in the Fifth Circuit decision *(21 Fed. [2nd] 374, 375, 376)*, its validity assumed and its scope determined. In its opinion, the

Sixth Circuit Court of Appeals thought that "the elements in question as well as the other elements, are but forms of construction that might be thrown together if occasion demanded or necessity arose, by any one who is skilled in the building art." In view, however, of its decision unqualifiedly affirming the decree of the District Court (R. p. 368) decreeing and deciding that "the patent and its only claim is valid, but not infringed" (R. p. 100), accordingly, the decision of the Sixth Circuit is, that the claim is valid but not infringed—all in conflict with the Fifth Circuit decision.

CONCLUSION.

As to Patent No. 1,379,224 and No. 1,507,440 this Court has granted certiorari in No. 809, October term 1929, No. 77, October term 1930, entitled *Smith v. Magic City Kennel Club, Inc., et al.*, on petition for certiorari to the Tenth Circuit Court of Appeals, it is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that a conflict of decision between the Fifth and Sixth Circuit Courts of Appeal as to the three patents in suit and on the same matter may be removed, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the United States Circuit Court of Appeals for the Sixth Circuit and finally reverse it.

Respectfully submitted,

JOHN E. SATER,
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Counsel for Petitioner.

FILE COPY

JAN 19

CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 315

HANNAH M. SMITH, Administratrix of ESTATE OF OWEN P. SMITH, Deceased,

Petitioner,

versus

SPRINGDALE AMUSEMENT PARK, LIMITED, PAUL M. WILLIAMS and GERALD BROWN.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

BRIEF ON BEHALF OF PETITIONER.

JOHN E. SATER,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 315

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Petitioner,

versus

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On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

BRIEF ON BEHALF OF PETITIONER.

OPINIONS OF THE COURT BELOW.

(I) *Smith v. Springdale Amusement Park, Limited, et al., 40 Fed. (2nd) 173* (R. p. 368); *Smith v. Springdale Amusement Park, Limited, et al., 39 Fed. (2nd) 92* (R. p. 89); *American Electric Rabbit, etc. v. Smith, 26 Fed. (2nd) 1016*, agreeing with conclusions in *Smith v. Ameri-*

can Electric Rabbit, etc., 21 Fed. (2nd) 366; see also *Magic City Kennel Club, Inc., et al., v. Smith, 38 Fed. (2nd) 170.*

JURISDICTION.

See petition and brief on application for writ of certiorari in this case.

STATEMENT OF THE CASE.

This is an equity suit for infringement of petitioner's patents relating to devices used in dog racing amusement (R. pp. 1 to 13, R. p. 60), being Patent No. 1,379,224, claims 1 and 2, (R. pp. 3, 60, 186 to 192c); Patent No. 1,507,439, Claim 1, (R. pp. 4, 60, 222 to 224) and Patent No. 1,507,440, claims 1, 2, 3, (R. pp. 5, 60, 254 to 256). Among other matters not material or not decided, respondents answered, denying validity of these patents and, if valid, they denied infringement (R. pp. 21, 23, 25, 26, 27, 31, 32, 36, 37, 40, 41, 45). After hearing (R. pp. 68 to 88) the District Judge decided that Claims 1 and 2 of Patent No. 1,379,224, for a dog racing device were valid but not infringed (R. p. 100); that Patent No. 1,507,440 for a housing for concealing tracks and cars having a laterally extending arm in a dog racing device was invalid but if valid was not infringed (R. p. 100) and Patent No. 1,507,439 for starting cage for racing dogs is valid but not infringed (R. p. 100), and accordingly dismissed the bill (R. p. 100). Petitioner thereupon appealed to the United States Circuit Court of Appeals for the Sixth Circuit (R. pp. 101 to 107) and, after hearing, said Sixth Circuit Court of Appeals affirmed the aforesaid decision of the District Court (R. p. 368). The case is before this Court on certiorari (R. p. 373).

Summary as to Patent No. 1,379,224, Claims 1 and 2.—This patent, admitted in evidence (R. p. 69), appears on pages 186 to 192c of the record. In his specifications, patentee Smith states that the invention consists of the arrangement and combination of parts described and claimed, and while the invention is not restricted to the exact details of construction disclosed, yet for the purpose of illustrating a particular embodiment thereof reference is had to the accompanying drawings (R. p. 189); and, in the drawings and specifications detailing the construction, the lure-carrying arm is hinged to the conveyor car and supported at its outer end by a rotatably mounted wheel. (R. p. 188, figure 3; R. p. 191). Claims 1 and 2 substantially describe the invention.

Claim 1. "In a dog racing amusement (1) a race course suited for dogs; (2) a casing extending around the outer side of the race course and provided with a longitudinal opening; (3) a mechanical conveyor including a track extending around the race course and located within the casing; (4) and a conveyor car mechanically operated upon said track and provided with an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure; (5) and a wheel rotatably mounted on and supporting the arm at the projecting end thereof".

Claim 2. "In an amusement, the combination (1) of a race track suited for dogs; (2) a covered rail track adjacent said course on one side; (3) a conveyor car mechanically operated on said track; (4) a horizontally extending arm hinged to said car extending midway of said

course; (5) a wheel rotatably mounted near the end of said arm, and resting on the ground; (6) a platform supported by said arm, and (7) a lure or quarry mounted upon said platform for attracting the dogs". (R. p. 192b).

It is not disputed that Respondents' apparatus is constructed in accordance with the patent to Creveling, No. 1,481,313 issued January 22, 1924, (R. p. 146; R. p. 119, *et seq.*) or about three years after the issuance of this Smith Patent No. 1,379,224. Nor is it disputed that Respondents' apparatus is substantially identical with the apparatus found to be an infringement in *American Electric Rabbit, etc. v. Smith, 26 Fed. (2nd) 1016* and *Smith v. American Electric Rabbit, etc., 21 Fed. (2nd) 366*, also constructed in accordance with the said Creveling Patent. Comparison of Claims 1 and 2 of this Smith Patent with Respondents' apparatus discloses an appropriation of the claims, except that Respondents' arm is rigidly supported or sustained on the car during operation, in lieu of the wheel support described and claimed. Respondents' apparatus is located on the left outer side of the course opposite the right outer side thereof, and Respondents' rigidly supported arm is retracted into the casing at the termination of the race by means of trip mechanism whereby the lure is made to disappear, whilst the arm and lure of the patent is made to disappear into the casing by means of switching the car. (R. pp. 71, 73, 75, 76, 77, 78, Defendants' Exhibit A. R. p. 140; Exhibit B. R. p. 141. See Creveling Patent Drawing 147, 148, 149, *et seq.*)

Summary as to Patent No. 1,507,439—Claim 1.—The single claim of this Patent is: "In a starting cage for racing dogs, (1) a frame comprising a box-like structure (2) divided into a plurality of compartments (3) and comprising walls formed of wire mesh partially covered with fabric, (4) individual rear doors for each of the compartments and (5) a single front door hinged at its upper end to the top walls of the frame, (6) divergent inclined members secured to the top of said frame and (7) extending upwardly and outwardly beyond the face of the front door and having their outer ends in the plane of the side walls of the box-like structure, (8) springs secured to the outer ends of said inclined members and to the door and lying in the plane of the hinges, and (9) a latch at the bottom of the cage for co-action with the lower edge of the front door to hold the front door normally closed against the tension of said springs, said springs adapted to raise the front door upon release of the latch". (R. p. 224).

In his specifications, the patentee says that the invention described and claimed is not restricted to the exact details of construction (R. p. 223) and: "It will be apparent that other means may be employed to raise the door 6, and other means may be employed to protect the dogs against injury in the stalls, without departing from the spirit of my invention". (R. p. 224).

Respondents have appropriated the claim, except that the walls of their compartment stalls are formed of wooden boards in lieu of wire mesh partially covered with fabric and except their inclined members are parallel, (non-divergent) instead of divergent (R. pp. 76, 78, 143, 144,

145), and except in lieu of ordinary tension springs they use elastic or aeroplane shock rubber. *(Ibid.)*

Summary as to Patent No. 1,507,440—Claim 1.—The claim is: "In a housing for covering tracks and cars having laterally extending arm operated on said track, the combination of (1) posts set in the ground at the sides of said track; (2) timbers attached to said posts to form a frame; (3) boards attached to said timbers and posts to form a continuous enclosure above said track; (4) and having a continuous opening in one side of said housing adapted to permit extension of the laterally extending arm therethrough; (5) truss rods attached to the closed side of said housing adapted to support the side of said housing above the said continuous opening." (R. p. 256). In his specifications, the patentee states, that the invention relates to means for concealing the track and conveyor car in a mechanical lure conveyor for dog racing courses (R. p. 255). He further states that the invention is not restricted to the exact details of construction, but for the purpose of illustrating a particular embodiment reference is had to the accompanying drawings (R. p. 255). This particular embodiment is shown in the drawings and in Claims 2 and 3 which provide for adjustable stay rods and adjustable screw threaded stay rods. (R. pp. 254, 256a).

Comparison of the illustrated cross section view of Respondents' housing with Claim 1 shows a literal translation of the Claim. (R. pp. 117, 142; R. pp. 71, 72, 76, 78).

SPECIFICATIONS OF ERROR.

The Sixth Circuit Court of Appeals erred in finding and holding:

(1) That Patent No. 1,379,224, Claims 1 and 2, are not infringed by Respondents,

(2) That Patent No. 1,507,439 if valid is not infringed by Respondents,

(3) That Patent No. 1,507,440 is invalid, but if valid is not infringed by Respondents.

ARGUMENT.

Summary of Argument as to Patent No. 1,379,224—Claims 1 and 2.—Considering the high rank of this patent in the art to which it relates, these claims are entitled to generous treatment and to a range of equivalents commensurate with the scope of invention; that having described and claimed his device in his preferred form, the patentee is entitled to all other forms which embody the substance of a lure-carrying arm horizontally extending from the conveyor through a continuous longitudinal opening of the casing located on either outer side of the race course; Respondents' substitution of the patentee's horizontal arm supported rigidly constitutes a colorable departure from the patentee's horizontal arm supported flexibly, both operating within the same principle, accomplishing the same result in substantially the same way, there being no breaking up or essential variation of that principle and mode of operation pervading the original invention; that said preferred movable or wheel support is neither a distinguishing characteristic of the device nor essential to its patentability nor material to its operation; that said wheel support finds

its mechanical equivalent in Respondents' form of rigid support of the patentee's arm, in that, either pertains to the working environment of the aforesaid inventive step, accessorial thereto and a matter of engineering selection; that no limitation is imposed on the patentee by the prior art, no disclaimer of equivalents for his said preferred form either in the specification, claims or Patent Office proceedings.

It is urged:

Point A. Said Patent (Claims 1 and 2) is entitled to a liberal construction and to a range of equivalents commensurate with its scope.

Point B. Patent Office Proceedings discloses no express limitations of patentee's preferred form.

Point C. Substitution of a rigid for the wheel support of the horizontal arm and locating the device on the left outer side of the race course, does not avert infringement.

Summary of Argument as to Patent No. 1,507,439— Considering that the essence of the invention consists in hinging the upper end of the exit door to the top walls of the frame in co-operation with inclined members secured to the top of the frame and extending upwardly and outwardly and connected with tension springs at their outer ends and to the bottom of the exit door for quickly raising said exit door upon release of the latch; that the invention is described and claimed in the preferred form; that Respondents' substitution of wooden board for wire mesh partitions partially covered with fabric and the change in

position of the inclined members from divergent to non-divergent as well as the substitution of rubber springs for "springs", embody change in non-essentials and are deliberate evasions of the claim involving no material change in function, operation or result; that neither the specifications, claims nor Patent Office proceedings contain an express limitation by way of estoppel or otherwise with respect to these elements; it is urged:

Point D. The invention is described and claimed in the preferred form.

Point E. Substitution of wooden board for wire mesh partitions, rubber springs for springs and arranging or locating the inclined members supporting the springs from divergent to non-divergent, do not avoid infringement.

Summary of Argument as to Patent No. 1,507,440—Claim 1.—Considering that Respondents' housing device contains all the elements of the claim in the same combination constituting identity in function, operation and result, it is urged:

Point F. Patent No. 1,507,440 is valid.

Point G. Respondents have infringed Claim 1 both in letter and spirit.

POINT A.

Patent No. 1,379,224 is entitled to a liberal construction.

Invalidity of this patent for want of invention or novelty is set up in the answer; but, that defense remains unsupported by evidence or not seriously assailed, leastwise, the Courts below have assumed its validity.

The prior art is exhibited in Pinard 1887 (R. p. 258), Moss (British) 1896 (R. p. 268), Walsh 1898 (R. p. 263), Smith 1912 (R. p. 275) and Everett 1913 (R. p. 271). Pinard (R. pp. 259, 260) and Moss (R. p. 269) show armless lure-carriers; Smith (R. p. 276) and Everett (R. p. 272), lure-conveyors concealed in an underground tunnel located between the inner sides of the race course, and provided with a vertical lure-carrying arm extending upwardly through a continuous slot on a level with the surface of the race course. Walsh (R. p. 264) proposes two race courses susceptible of being used together or alternately. Each race course is separated, as to one by a right outer fence and as to the other by a left outer fence. Between each fence and adjacent thereto he places his track and conveyor car. To protect both dogs and his travelling mechanisms and to conceal the mechanisms from the racing dogs, these fences must be high enough to prevent the dogs from leaping over the fences and that necessitates the employment of an arm extending upwardly and outwardly vertically inclined in transverse direction to reach over and clear the respective fences. It further necessitates, as shown, a connection at the end of this vertically inclined arm, of another arm, similar to a forearm (whether pliant as by the use of a cable or stiff by the use of a rod or pole) extending vertically downward to a lure-carrying mat dragging on the ground. All this involves the situation of having his angular or elbowed arms operating in relatively vertical planes. Due to the awkwardness of his angular arm in its relation to the car, high speeds involved and the curves encountered, a problem in mechanics and in the law of centrifugal force is presented but not solved, in view of the absence of evidence that it ever worked.

(b) Smith proposed a radical departure in principle. (R. pp. 187 to 192C). He connected the two necessary co-operating elements of conveyor car and lure by an arm horizontally extending over the race course, and from conveyor to lure in closest proximity as fundamentally necessary to a practical functioning at high speed. Retaining this basic idea as indispensable, he had to overcome the difficulty of concealing the travelling conveyor from dogs and spectators without in any way affecting the application of the principle. The prior art presented an impassable barrier; so he surmounted it by placing the protecting fence on the far side of the rail track conveniently and relatively distant from the nearest side of the race course, thence from its upper portion by carrying it over to and directly in front of the outer side of the race course, leaving a continuous opening for the free operation of his horizontal arm. In all this, he produced function never performed before, terminating in a new and useful result never achieved before—a successful and complete dog race in pursuit of an inanimate lure. (Compare *Smith v. Springdale Amusement Park, 39 Fed. 92*, at pages 93 and 94). Adoption of this principle or mode of operation pervading the invention has not been varied by Respondents is conceded.

But under *Sec. 4888, U. S. Rev. Stat.*, Smith was required to embody that principle in what he considered the best mode; and in his specifications and drawings he describes his best mode, reserving unto himself all other modes or forms by declaring that the described and claimed invention "is not restricted to the **exact** details of construction disclosed herein, yet for the purpose of illustrating a

particular embodiment thereof, reference is had to the accompanying drawings". (R. p. 189). This reservation thus carried into his claims is tantamount to claiming his device **substantially**, though not exactly, as described. *(Winans v. Denmead, 15 How. at pages 342, 343; Western Electric Co. v. La Rue, 139 U. S. 601, 606)*. In other respects that was unnecessary *(United States v. Societe, etc., Cail, 224 U. S. 309, 328)* for he teaches how to practice his invention in his preferred form by describing and claiming his horizontal arm as being hinged (Claim 2, R. pp. 192b, 188, member 25) to the conveyor car, and near or at its outer end supported by a wheel rotatably mounted (R. p. 191); in short, that the wheel supports the hinged arm; and further, that the casing be located on the exterior or grandstand outer side of the race course as distinguished from its interior or infield outer side (R. p. 186). As Respondents support Smith's arm by a rigid in lieu of the preferred wheel support and transfer his casing from the preferred right outer side to the left outer side of the race course, the question is, does the substitution and transfer avoid infringement of either claim or both.

(c) We believe that this patent exhibits the application of a principle in dog racing devices theretofore unseen and new elements and functions not thought of or found in the prior art whereby a result dreamed of but never achieved culminated in the first successfully operating apparatus evidencing "the important but long delayed and therefore not obvious step", and on the basic idea of which all subsequent devices must necessarily depend. *Hildreth v. Mastoras, 257 U. S. 27, 34; Westinghouse v. Boyden, 170 U. S. 537; Hobbs v. Beach, 180 U. S. 383, 399.*

Smith's application for patent was filed in September, 1919, (R. p. 189); and whilst the burden is on Respondents, they have failed to show that any thing or any body produced an operatively successful device or complete dog race of this character, experimentally or otherwise. *Hildreth v. Mastoras, 257 U. S. 27, 33; Caffin v. Ogden, 85 U. S. 120.* The prior art shows that for over a third of a century others have tried, patents have issued, but nobody ever succeeded or used them or attained any operative success. And it is undisputed, that prior to this Smith 1921 patent application, dog racing in pursuit of an inanimate lure was unknown (R. pp. 74, 83, 84, 85). The only evidence of an attempt was made by Smith in 1910 or 1912 when he sought to get a dog race out of his 1912 patent; that attempt resulted in operative failure and was abandoned. (R. pp. 73, 74). Added recognition is given by tributary inventors who claim an addition or improvement only for retracting Smith's horizontal lure-carrying arm into his casing after the race is run, to an inoperative position. (See Creveling Patent 1924, R. p. 146, 147, 148). *American Electric Rabbit, etc., v. Smith, 26 Fed. [2nd] 1016; Smith v. American Electric Rabbit, etc., 21 Fed. [2nd] 366, 371).* It is believed that the character of the invention falls within the criteria established in *Hildreth v. Mastoras, 257 U. S. 27, supra,* and kindred decisions.

Liberal construction of these claims should be accorded in view of *Hildreth v. Mastoras, 257 U. S. 27; Eibel Process v. Minnesota Co., 261 U. S. 45, 63* (see also, *Smith v. American Electric Rabbit, etc., 21 Fed. [2nd] 366; 370).* And whether or not Smith is to be considered a pioneer in the nebulous meaning of that term, he "the

patentee having described his invention and shown its principles, and claimed it in that form which most perfectly embodies it, is, in contemplation of law deemed to claim every form in which his invention may be copied, unless he manifests an intention to disclaim some of these forms." *Winans v. Denmead, 15 How. 330, 342, 343; Western Electric v. LaRue, 139 U. S. 601, 606; Hoyt v. Horne, 145 U. S. 302, 308, 309; Sanitary Ref. Co. v. Winters, 280 U. S. 30; McSherry v. Dowagiac Co., 101 Fed. 716, 721 (C. C. A. 6); Dowagiac Co. v. Minnesota Moline Co., 118 Fed. 136, 140, 141, (C. C. A. 8).* As neither specifications, claims, nor prior art show a disclaimer of all forms of Smith's horizontal lure-carrying arm, we next inquire whether he has limited himself by estoppels in the Patent Office proceedings.

POINT B.

Patent Office Proceedings disclose no express limitations of patentee's preferred form.

The decision of the Sixth Circuit rests principally on the finding that "As both (hinge and wheel support) were specifically relied upon by the patentee in his specifications and claims and were regarded by the Patent Office as essential to avoid references in the prior art they are to be treated as limitations". (R. p. 370; *Smith v. Springdale, etc., 40 Fed.* [2nd] *at page 175).* This is error. Having shown that there is nothing in the specifications and claims indicating a disclaimer of other forms of support, it is submitted that the Patent Office, in opposition to the Court's finding, had **disregarded** the flexible support as essential to avoid references in the prior art,

and has, on the contrary, regarded the flexible support as non-essential, involving neither invention nor novelty either on an existing organization or on the claims, thereby recognizing the patentee's form described and claimed as preferential. In other words, it was regarded by the Patent Office and by Smith that whether the arm of the prior art or Smith's arm was supported or operated rigidly or flexibly was immaterial.

In approaching the File Wrapper, we put aside for brevity's sake, the rejected original, amended and revised claims 1 and 2 (R. pp. 160, 163, 165, 168, 169, 171) since these claims relate to an armless lure conveyor similar to Pinard (R. p. 260) and Moss (R. pp. 268, 269), and a housing for concealing it, the ground of rejection being that as Moss was provided with a housing, it would not be invention to provide a housing for an armless lure conveyor as claimed in these rejected original, amended and new claims 1 and 2 (R. pp. 160, 163, 165, 168, 169, 171).

As those two rejected, amended and revised claims are not concerned with the claims in suit or the offending device, it is to inquire whether or not Smith's special reservation contained in his specifications (R. p. 189) and the reservations accorded him by law *(United States v. Societe Anonyme, etc., Cail, 224 U. S. 309, at page 328*, and cases there cited) as to his preferred form of supporting his horizontal arm by a wheel support, has, notwithstanding the reservation, been restricted to that form only or otherwise reduced to an express limitation as to form by way of estoppels contained in the File Wrapper.

That inquiry brings us to rejected original as amended and allowed Claim No. 3, (R. pp. 160, 163, 165, 168, 169, 171). Original Claim No. 3, reads as follows:

> "3. In an amusement, the combination of (1) a race track suited for dogs, (2) a covered rail track adjacent said course, (3) a conveyor car mechanically operated on said track (4) **an arm attached to said car extending midway of said course,** (5) **a wheel rotatably mounted on said arm,** and (6) a lure mounted on said arm". (R. p. 160),

This original claim 3 was rejected on Walsh 611, 876, October 4th, 1898, (R. p. 163). As the Examiner "contents himself with a reference, we look to the matter referred to, to ascertain his meaning." *(Vroonan v. Penhollow, 179 Fed. 296, 305 [C. C. A. 6]; Frey v. Marvel, 236 Fed. 916, at page 922 [C. C. A. 6]).* Turning to the Walsh patent (R. p. 264), we find a race track suited for dogs, an uncovered rail track adjacent said course, a conveyor car mechanically operated upon said track, **an arm attached to said car extending midway of said course;** but we do not find a covered rail track or a wheel rotatably mounted on said arm or a lure mounted on said arm. Accordingly, the necessary inference from the Examiner's objection was, that there is neither invention nor novelty in supporting an extending arm by a wheel rotatably mounted (C. D. 1897, p. 694). Uninformed of the specific ground of objection, Smith amended the claim still retaining, "an arm attached to said car extending midway of said course", and "a wheel rotatably mounted on said arm", so as to read as follows:

> "Claim 3. In an amusement, the combination of (1) a race track suited for dogs, (2) a—rail track

adjacent said course, (3) a conveyor car mechanically operated on said track (4) **an arm attached to said car extending midway of said course,** (5) **a wheel rotatably mounted on said arm,** (6) a lure mounted on said arm—and a casing extending around the race course and receiving and concealing the track and the conveyor car and provided with a longitudinal opening through which the said arm extends." R. p. 165.

In presenting this amendment, Smith's attorney remarked "Claims (2 and 3) against which the Walsh Patent was cited have (has) been amended to include the housing extending around the track and concealing the mechanical conveyor. This element is not present in the Walsh Patent". (R. 167). As thus amended, the claim was again rejected in these words: "Claims 1, 2 and 3 are rejected on either Walsh or Moss, both of record. Moss is provided with a housing and it would not be invention to provide Walsh with one". (R. p. 168). From this rejection, it is clear, the Examiner then considered that the claim read on Walsh and it constituted neither invention nor novelty, to encase Walsh's conveyor car having "an arm attached to said car extending midway of said course"; and furthermore, the twice repeated inclusion of "a wheel rotatably mounted on said arm" involved neither invention nor novelty, but a detail, mechanical selection or form of supporting an extending arm insufficient to distinguish it from the art of record, otherwise the claim would have been allowed as a patentable improvement on Walsh.

Although the Examiner limited his objections to the Walsh Patent and to housing his conveyor car having an extending arm, it is apparent that Smith's attorney broadly

claimed an extending arm irrespective of its angularity or an arm extending upwardly, outwardly and thence downwardly, as in Walsh, or whether it operated in a vertical plane, whereas the gist of Smith's invention, its fundamental element, principle and mode of operation was the straight out lure—carrying arm laterally extending and operating exclusively in a substantially horizontal plane. Accordingly, this original claim 3 as amended was cancelled (R. p. 169) and a new claim propounded as follows:

> "3. In a dog racing amusement, (1) a race course suited for dogs, (2) a casing extending around the outer side of the race course and provided with a longitudinal opening, (3) a mechanical conveyor including a track extending around the race course and located within the casing, (4) and a conveyor car operated upon said track and (5) provided with an arm extending **through** the longitudinal opening of the casing **in a projecting position over the track** and adapted to carry a lure, (6) and a wheel rotatably mounted on and supporting the arm at the projecting end thereof". (R. p. 169).

In his remarks, Smith's attorney challenged the Examiner to point out a casing as called for in either of the three claims, for he says: "Applicant is unable to find such a casing in the British patent to Moss and the Examiner is respectfully requested to apply the references to the extent of pointing out where this housing is shown". (R. p. 170). To which challenge, the Examiner responded as follows: "Case reconsidered as amended Nov. 10, 1920, Claims 1 and 2 are again rejected on Moss. The housing of Moss is Member 28. The remaining claims appear allowable". (R. p. 171).

Right here, as already observed, Claims 1 and 2 merely claimed a housing or casing extending around the race course receiving and concealing the conveyor car (R. pp. 160, 165), and made no claim for a casing provided with a longitudinal opening as in Claim 3, nor did Claims 1 and 2 claim an extending arm at all; but these Claims 1 and 2 contemplated and claimed an armless mechanical conveyor as in Pinard and Moss. This affords the reason why the Examiner rejected Claims 1 and 2 (R. pp. 160, 165), and accepting the challenge he said: "The housing of Moss is member 28. The remaining Claims (Claims 3, 4, 5, 6) appear allowable". Again turning to the Moss Patent (R. pp. 268b, 269), member 28 is a "hood" protecting a trolley wire within the race course proper and sinuously extending around it but not on either of its outer sides. In consequence, whilst the Examiner rejected Claims 1 and 2, he allowed Claim 3 (R. p. 171) and after adjustment of the numerals (R. p. 172) the allowed Claim 3 became Claim 1 of the Patent. *(Hildreth v. Mastoras, 257 U. S. 27, 33, 34).*

Parenthetically, in the rejected and original Claim 3 and as amended, the wheel support is included and reads: "A wheel rotatably mounted on said arm", whilst in allowed Claim 3, it reads "a wheel rotatably mounted on and supporting the arm at the projecting end thereof". (Compare R. pp. 160, 165, 169). This is a mere change of expression having substantially the same meaning, although not required by the Examiner, but in view of the

specifications, that change in expression clarifies the clause according to the description (R. p. 191) in that the function of the wheel is to support the arm *(Hubbel v. United States, 179 U. S. 77, at page 80)*.

Now, comparing this allowed Claim 3 (R. p. 171) with rejected Claim 3 (R. pp. 160, 163) as amended (R. pp. 165, 168, 169) it is clear, that in the rejected original and amended Claim 3, the arm element was broadly claimed, thusly: "an arm attached to said car extending midway of said course". That clause plainly and broadly covered an arm vertical or vertically inclined and operating in a vertical plane as in Walsh (where his extending upper portion of the arm reached upwardly in transverse direction vertically inclined to clear his fence and his jointed forearm directed vertically downward) as well as a horizontally extending arm and operating in a horizontal plane, as in Claim 4 of the File Wrapper, Claim 2 of the Patent. Evidently, the Examiner had this distinction in mind during the course of his examination, and it was not until the contested Claim 3 was framed to restrict the **position** of the arm as extending **through** the longitudinal opening of the casing in a projecting position **over** the track, that the claim was allowed. Herein lies the dominating element, so recognized by the Examiner in his allowance of Claim 3.

Smith's attorney at all times insisted that the casing provided with a longitudinal opening and in which the conveyor car and tracks were located and co-operating with the arm was new, and although the examiner had by his rejection of amended Claim 3 disagreed, nevertheless he

finally yielded to Smith's insistence as shown by his final rejection of Claims 1 and 2 and his final allowance of Claim 3. But aside from the Examiner's concession, Respondent's device contains that and all the fundamental cooperating elements, the departure from the letter of the claim consisting in the form of supporting the arm.

Nowhere in the File Wrapper, or in the prior art or in the specifications, is there to be found anything whereby the Patent Office or the patentee had regarded the wheel support of the arm as exclusive of all other forms of support or as constituting it a distinguishing characteristic. Smith at no time was required to limit himself to a wheel support in order to secure the allowance of his claims. *Bundy v. Detroit, etc., 94 Fed. 524, 542, 543 (C. C. A. 6).* Accordingly, the element of wheel support of the arm remains unaffected as to the patentee's preferred form, freed from the charge of an express limitation, separable from the substance and pertaining solely to the working environment of the inventive step. *(Bundy v. Detroit, supra).*

Reduced, therefore, to a final analysis, the difference between rejected and as amended Claim 3 and allowed Claim 3, is clearly defined. By the rejections and Smith's acquiescence therein, he has disclaimed broadly an extending lure-carrying arm attached to the conveyor car, whereas by the allowance he has limited himself to a lure-carrying arm extending through the longitudinal opening of the casing in a projecting position over the track, nowhere to be found in the prior art. This is the limiting effect of the rejection, and reading directly on Respondent's de-

vice. For since estoppels must rest on a definite basis, the familiar rule followed in *I. T. S. Rubber Co. v. Essex, 272 U. S. 429, 444*, and kindred decisions does not carry over; nor does it contemplate a net result as a limitation on every element in the allowed claim; nor does it resolve the patented device or an accessorial element claimed in the preferred form into a disclaimer of all other forms, particularly where that preferred form is outside the gounds of rejection or not controlled by the references of the prior art. *Crown Cork & Seal Co. v. Sterling, 217 Fed. 381, at pages 390, 391, 392 (C. C. A. 6); Vroonan v. Penhollow, 179 Fed. 296, 305 et seq. (C. C. A. 6); Wayne v. Benbow-Brammer, 168 Fed. 271, 278, 279 (C. C. A. 8); National Hollow B. B. Co. v. Interchangeable Co., 106 Fed. 693, 713, 714 (C. C. A. 8); Bundy v. Detroit, etc., 94 Fed. 524, 543; Hildreth v. Mastoras, 257 U. S. 27, 33, 34.* In short, the estoppel is co-extensive with the disclaimer and no further, for "to be estopped by the action of the Patent Office, the patentee must be shown to have surrendered something which he **now** claims in order to obtain that which was allowed". *Bundy v. Detroit, supra.* Smith was never required to surrender anything except as stated; and when we limit him to the lure-carrying arm extending through the continuous longitudinal opening of the casing in a projecting position over the track we have given to the rejections of claim 3 every effect that is required.

As no question was raised in the Patent Office proceedings in respect to the location of the casing, and by the rejections and acquiescence in original and as amended Claim 3, the Patent Office decided and Smith conceded that the wheel support disclosed neither invention nor

novelty, was not the distinguishing characteristic of the claim but an accessorial element involving mechanical selection, it is easy to perceive the sounder reasoning and the inappositeness of the cited cases by realizing that self-imposed limitations or estoppels in the Patent Office proceedings are to be marked off according to the issue therein definitely raised and determined. *Hildreth v. Mastoras, 257 U. S. 27, 33, 34.*

In view, therefore, of the foregoing, it is urged that the Sixth Circuit committed error in finding and holding that "As both (hinge and wheel) were specifically relied upon by the patentee in his specifications and claims and were regarded by the Patent Office as essential to avoid references in the prior art, they are to be treated as limitations". *(Smith v. Springdale, etc., 40 Fed. [2nd] at page 173; R. p. 370).* And the Fifth Circuit was right in finding and holding that "A reading of his claim in the light of his specifications does not suggest an intention to restrict himself to the use of the wheel and hinge on the projecting arm, which might well have been rigid instead of flexible as far as function and operation were concerned. **There is nothing** to show his intention to relinquish to the public all forms in which his invention might be embodied" (citing authorities). *Smith v. American Electric Rabbit, 21 Fed. (2nd) 366 at page 371; Ibid. 26 Fed. (2nd) 1016.*

Turning to the opinion in *39 Fed. (2nd) supra*, we believe that full consideration of the File Wrapper is lacking in failing to observe the distinction, raised by the examiner and acquiesced in by Smith, between broadly claiming "an arm attached to said car extending midway

of said course" and restrictively claiming "an arm extending through the longitudinal opening of the casing in a projecting position over the track"; the former reading on Walsh's angular vertically inclined transverse directed arm; the latter on Smith's horizontal arm. Smith is not now claiming that his allowed claim has the same breadth and scope of the rejected claim, nor does he now claim that Walsh's arm is equivalent to his arm, nor is it pretended that Respondents are using Walsh's arm, but it is conceded that they are using Smith's.

(b) Coming to Respondent's contention refuted by the opinion of the Fifth Circuit Court of Appeals, that as Respondent's casing is located on the interior outer side relative to its race course, or side facing the infield or inner oval, the location of the casing in allowed Claim 3 is reduced by estoppel to the exterior outer side or side facing the outfield or grandstand.

At no time was the location of the casing required to be restricted to the exterior outer side. The rejection was confined to the Examiner's holding that it was not invention to provide Walsh's rail track and car with a casing. In revising allowed Claim 3, the casing was claimed substantially as described in the preferred location. There was nothing in the rejections or rejected claims nor in the prior art that imposed such a limitation as contended for. Aside from the location claimed, being the one preferred by reference to the specifications and drawing (R. p. 186), the term "outer side" is broad enough to include either outer side as "a race course suited for dogs" comprises any shape or size desired, whether rec-

tangular straight-of-way or parallelistic oval having two external sides or fences oppositely disposed and constituting the race course, (as distinguished from a circular plane surface) either of which has two outer sides—right outer and left outer, as well as between which there are two inner sides—right inner and left inner.

POINT C.

Substitution of a rigid for the wheel support of the horizontal arm and locating the device on the left outer side of the race course does not avert infringement.

(a) Vice of the adverse opinions below lies in assuming that Smith's sole contribution was formal by prescribing flexibility to an extending lure-carrying arm. But that flexibility (even if it involved invention albeit denied by the Patent Office and by Smith according to the File Wrapper) is not claimed as tributary to a prior organization whether pictured in a paper patent or publication or existing in point of fact. The art and its history shows that something more than form was left in the inventive field, in that the art lacked the essence of all that Smith had supplied. These claims, therefore, cover an invention of substance manifested by the application of Smith's principle, inhering in his fundamental cooperating elements of a horizontal lure-carrying arm extending through the continuous longitudinal opening of the casing. Here then, substance is separable from form; and looking through form to substance, the form, however varied, is of no importance. *Winans v. Denmead, 15 How. 342; Machine Co. v. Murphy, 97 U. S. 120.* And since equivalency em-

bodies "substantially", Respondents having adopted the substance of the device, the variation from flexibility to rigidity or vice versa, goes to form, because there is no breaking up or change in principle but a doing of the same thing in substantially the same way. *Sanitary Ref. Co. v. Winters, 280 U. S. 30; Abercombie & Fitch v. Baldwin, 245 U. S. 198, 209.* This substantial identity is obvious when we consider that it is the idea of means, and not of form, which is determinative of identity of principle; for Smith's arm, in either form, retains its indispensible position and function that cleaves to the mode of operation.

This is confirmed by the Patent Office experts as shown by the Creveling File Wrapper (R. pp. 119, 125, 127, 128, 132, 133). Creveling specifically claimed every element of Patent 1,379,224 in his first claim "and a lure-supporting arm **sustained** on the car and extending through the slot of the housing to position the lure within the race track" (R. p. 125). This claim was rejected on Smith No. 1,379,224 (R. pp. 127, 128). The element was again repeated by way of amendment, thusly: "and a lure-supporting arm **sustained** on the car for movement over the race track" (R. p. 128). The Patent Office again rejected this Claim on May 9, 1923, stating "Claim 1 is again rejected on Smith of record in which every feature of the Claim is clearly disclosed in the same relation and performing the same function". (R. p. 132). Thereupon Creveling acquiesced by cancelling lines 6, 7, 8 of his Claim 1 reading "and a lure-supporting arm sustained on the car and extending through the slot etc.", (R. p. 133),

and so amended the claim as to claim and exhibit his true invention, for retracting Smith's arm into Smith's casing after the race to an inoperative position (R. p. 136).

The Patent Office proceedings of this Patent hereinbefore reviewed, sufficiently shows, that no quality of invention or novelty is involved in selecting a form of support, as that is in the common field of mechanical construction. See also *Thomson-Houston v. Athol, 91 Fed. 767, 765 (C. C. A. 1)* quoting with approval *Thomson-Houston v. Athol, 83 Fed. 203 (C. C.)* and recognized in *Commissioners Decisions 1897, p. 694*, where it was held, that to support a working part, whether rigidly or elastically, any mechanical engineer must select and as he may select either, such selection is mechanical skill. See also *Temco v. Apco, 275 U. S. 319, 328.* Respondents have merely transferred the support at the projecting end of the arm into its connecting end on the car without in any manner varying the principle of guiding the lure within the race course by means of the horizontal arm. The change was therefore a question of degree in the use of substantially the same means. *(Webster Loom Co. v. Higgins, 105 U. S. 580; Brush v. Condit, 132 U. S. 37, 39; Sanitary Ref. Co. v. Winters, 280 U. S. 30).*

Applying the test of interchangeability or non-interchangeability *(Miller v. Eagle Mfg. Co., 151 U. S. 208)*, the arm may be, in fact is, used in either apparatus whether supported rigidly or movably while the apparatus is in operation, for there is no radical unfitness, no radical change in function or result, merely a change in form; since the element of support pertains to the working en-

vironment of the inventive step. And it is settled that changes in form or construction of parts will not avoid infringement where the principle or mode of operation of the patent is taken; or where the changed form or construction is neither the distinguishing characteristic, nor material to the device or its operation. *Winans v. Denmead, 15 How. 342; Burr v. Duryee, 1 Wall. 531, 573; Sewall v. Jones, 91 U. S. 171; Ives v. Hamilton, 92 U. S. 426, 431; Robertson v. Blake, 94 U. S. 728, 734; Seymour v. Osborne, 11 Wall. 516, 560; Elizabeth v. Pavement Co., 97 U. S. 126, 137; Machine Co. v. Murphy, 97 U. S. 120, 125; Marsh v. Seymour, 97 U. S. 348, 359; Imheuser v. Buerk, 101 U. S. 647; Hoyt v. Horne, 145 U. S. 302, 308; Hobbs v. Beach, 180 U. S. 393, 401; Abercombie & Fitch v. Baldwin, 245 U. S., 198, 207, 208, 209; Temco Co. v. Apco Co., 275 U. S. 319, 328; Sanitary Ref. Co. v. Winters, 280 U. S. 30; Auto Vacuum v. Sexton, 239 Fed. 898 (C. C. A. 2); Litson v. Alaska, 130 Fed. 129, 142, 143 (C. C. A. 9); McSherry v. Dowagiac, 101 Fed. 716, 722 (C. C. A. 6); Metallic Extraction v. Brown, 104 Fed. 345, 353 (C. C. A. 8); Dowagiac v. Minnesota Moline Plow, 118 Fed. 136 (C. C. A. 8); Lourie v. Lenhart, 130 Fed. 122, 129 (C. C. A. 8); Wayne v. Benbow Brammer, 168 Fed. 271, 278 (C. C. A. 8); Adam v. Folger, 120 Fed. 260 (C. C. A. 7); Vroonan v. Penhollow, 179 Fed. 296 (C. C. A. 6); Wellman v. Cramp, 3 Fed. (2nd) 531, 533 (C. C. A. 6); Yancey v. Enright, 230 Fed. 641 (C. C. A. 5); Reece v. Globe, 61 Fed. 958 (C. C. A. 1); Kings County, etc., v. U. S. Consol., etc., R. Co., 182 Fed. 59, 63 (C. C. A. 9); Angelus v. Wilson, 7 Fed. (2nd) 314 (C. C. A. 9); Walker on Patents, Sixth Edition, Sec. 419, Vol. I, p. 517; Walker on Patents, Sixth Edition, Vol. I, Sec. 412, p. 501.*

(b) Witness Keen testifies: "I think that in the gid arm, the vibration of the car will in time crystallize e arm and cause it to break off. I don't believe that ndition would occur where the arm is supported by a ovable support". (R. p. 78). And on page 79 of the ecord, he reiterates his opinion and adds: "As a matter fact, I know it happened, because Mr. Smith tried the gid arm and discontinued the use of it. I believe he und the rigid arm objectionable and that is why he put e wheel at the end, because the rigid arm was not satisctory." (R. p. 79). This opinion of the witness and his lief that Smith found the rigid arm objectionable or not tisfactory, clearly indicates Smith's compliance with *Sec. 88, U. S. Rev. Stat.*, which requires the inventor to state his description the mode which he contemplates to be st. *Walker on Patents, 6th Ed., Vol. 1, Sec. 160, pp. 188, 9; Morey v. Lockwood, 8 Wall. 230; Continental Paper g v. Eastern Paper Bag, etc., 210 U. S. 405, 418; Vrooen v. Penhollow, 179 Fed. 296, 302.* There was no deviaon from his principle, no change in his fundamental coerating elements, no change in the function of his arm, erely a workshop detail or mechanical selection of a better preferential form of support as a precautionary mease against accident. (Compare *Abercombie and Fitch v. ldwin, 245 U. S., at page 209).* For we take it, that ingement inheres in what Respondents' device does, not hat it omits to do. *Hobbs v. Beach, 180 U. S. 383, 401.* that whether the flexible arm or the rigid arm works tter or worse is of no consequence. *Winans v. Denmead, How. 342; Hoyt v. Horne, 145 U. S. 302, 308, 309; rush v. Condit, 132 U. S. 37; Marsh v. Seymour, 97 U. 348, 359; Murray v. Detroit Wire Co., 206 Fed. 465,*

468 (C. C. A. 6); Nathan v. Howard, 143 Fed. 889 (C. C. A. 6); King Axe v. Hubbard, 97 Fed. 795 (C. C. A. 6); Woodward v. Boston Lasting Co., 60 Fed. 283 (C. C. A. 1); Yancey v. Enright, 230 Fed. 641 (C. C. A. 5); Scheible Co. v. Clark, 217 Fed. 760, 770, 771 (C. C. A. 6); Temco v. Apco, 275 U. S. 319, 328; Smith v. American Electric Rabbit, etc., 21 Fed. (2nd) 366, 371; Ibid, 26 Fed. (2nd) 1016.

(c) Respondents argued below in line with the District Court in *Smith v. Springdale Amusement Park, 39 Fed. (2nd) 92, 94, 95*, that regardless of Smith's reservation in his specifications and the reservation accorded him by law as to form and location, the preferred form of wheel support claimed considered in connection with Smith's escape for the lure and the preferred location of the apparatus on the right outer side of the race course, is nevertheless reduced to a voluntary limitation on the theory advanced that if the track was slightly banked at the curves, the lure would perceptibly leave the ground at such curves and in direct proportion to the angle of banking, and this accounts for the wheel support implying flexibility and the location of the apparatus on the right outer side, with the asserted conclusion that the arm rigidly supported would not work on the right outer side of the race course at the curves *(39 Fed. [2nd], pp. 94, 95, supra)*.

The specification and claims are not limited to an oval shaped race course having two outer sides, though that form is illustrated and described as one of several; it includes a rectangular or straight-of-way course, and the straight-of-way section of the illustrated oval course, as to

hich the foregoing theory is inapplicable; and yet, the se of the rigid arm will nevertheless infringe at some stage f its operation it not being necessary that it should in- ringe at all stages. *Sewall v. Jones, 91 U. S. 171; Hoyt v. lorne, 145 U. S. 302, 308; Farrington v. Haywood, 35 Fed. 2nd) 628, 631 (C. C. A. 6).*

The statement that the lure would perceptibly leave he ground on the curves because of banking is, we think, nadvertent, unless the angle of the banked railbed is dis- roportioned to the angle of the banked course-bed; for hat is meant is, that the lure on the end of the rigidly upported arm would travel closer to the ground at the urves on that side and leave the ground at the curves on he other side, since the rigid arm assumes the same in- ined position as the car, produced by the banking of the ailbed. On the other hand, it is inadmissible (and without ny engineering authority or evidence) to bank the course- ed around the curves so as to fit the assumption, which e believe is opposed to the appropriate manner of con- ruction under given conditions. For the hypothesis fails take into consideration the length of the arm and the nportance of grades of course-bed and railbed, so indis- ensable in engineering practice. The unchanging position f the moving rigid arm relative to the course-bed is regu- ted and proportioned around the curves according to suit- ble grades of course-bed and railbed. By raising the de- red grade of the railbed and lowering the desired grade f the course-bed, the angle of banking the railbed at the urves has practically no effect upon changing the extend- g position of the rigid arm relative to the bed of the urse. The record is barren of any evidence tending to

support the engineering opinion of either the District Court or Circuit Court of Appeals. We believe it is opposed to common as well as to engineering experience. On the other hand, these details of designing the railbed and course-bed for cooperation with the rigidly supported arm is purely a matter for the engineer; it is outside the patent. With the movable support of the arm, no raising of the railbed or lowering of the course-bed is required, which may or may not account for Smith describing and claiming this subordinate element in the mode he considered best for the application of his principle and the functioning of his fundamental cooperating elements. In view, therefore, that the wheel support of the arm, implying flexibility, furnished an accessory to his underlying invention, the liberal rather than the strict rule of equivalency obtains, especially in the Sixth Circuit. *Wellman v. Cramp, 3 Fed. (2nd) 531, 533 (C. C. A. 6); Safety Automatic v. Edwards, 7 Fed. (2nd) 92, 94 (C. C. A. 6); Bundy v. Detroit, 94 Fed. 524, 538 (C. C. A. 6); McSherry v. Dowagiac, 101 Fed. 716, 722 (C. C. A. 6).*

Nor is the preferred form affected or converted into a voluntary limitation by Smith's means in providing an escape of the lure into the casing at whatever desired point on either side of the course. The claims are not concerned with this feature; on the other hand, the escape is effected by switching the conveyor car, and obviously, whether the wheel support or the rigid support of the arm is used, the car, may be switched anywhere, in the straight-of-way or around the curves, on either side. This is manifest. (R. pp. 186, 192a).

(d) With respect to placing the apparatus on either outer side of the race course, the Courts are substantially in accord. *Magic City, etc., v. Smith, 38 Fed. (2nd) 170, 173; American Electric Rabbit, etc., v. Smith, 26 Fed. (2nd) 1016,* and *Smith v. American Electric Rabbit, etc., 21 Fed. (2nd) 366, 369; Smith v. Springdale, etc., 40 Fed. (2nd) 173.*

As shown in the specifications and drawing, the apparatus is preferably located on the right outer side, (see drawing, R. p. 186) the offending device being located on the left outer side. Not having expressly limited himself to any one outer side, the transposition is unsubstantial, *(Smith v. American Electric Rabbit, etc., 21 Fed. [2nd] p. 369,* and cases there cited), there being no change in function, operation or result.

POINT D.

Patent No. 1,507,439 describes and claims Smith's starting cage in the preferred form.

Though not definitely deciding that this Patent is invalid for want of invention, the adverse opinions below seem to believe that it involves the exercise of ordinary mechanical skill. (R. pp. 98, 371; *39 Fed. [2nd] 97; 40 Fed. [2nd] 175).* Unless we ignore the ritual *(Webster Loom Co. v. Higgins, 105 U. S. 580; Western Electric v. LaRue, 139 U. S. 601, 606),* or unless hindsight is to be looked upon with favor, *(Potts v. Creager, 155 U. S. 597, 607, 608; Kurtz v. Belle Hat, 280 Fed. 277 (C. C. A. 2),* Smith was the first and only one who had given to the art a device for starting racing dogs which ordinarily would be

or is capable of being done by hand, to say nothing of its superiority in efficiency and result over the human hand. For starting racing dogs (six or more) by hand, obviously presents problems and difficulties for fair and equal starting that this apparatus has solved.

Fair and equal starting is the object in view. With horses, when the barrier is raised, starting depends on horse and rider; with dogs, when the exit door is thrown out, starting depends exclusively on the hound. Besides, skeleton cages or stalls exhibited by the horse-starting references will not restrain or hold dogs in preparation of the start because of well recognized dissimilarities. Aside from noting the many characteristic differences between the temperament of dogs, horses and other quadrupeds, or between horse-starting and dog-starting, the Courts below were constrained to call in the horse-starting art.

Reservedly assuming the relationship, Smith's object was to provide a light weight box or cage having a plurality of stalls, a separate stall for each dog pending its release from the cage, the stalls so constructed as to protect the dogs from injury while confined in the cage and give them all an equal opportunity in the race by simultaneous releasing effected by a quick opening of a single exit door, and the immediate removal of the cage from the track after such releasing. (R. p. 223). It is apparent that Smith's purpose in providing for wire mesh partitions was to give lightness so as to effect such removal, whereby the track is freed from the obstructing cage during the race. And the purpose in providing that the partition walls be partially covered with fabric was to protect

the dogs from being injured by their pressing or rubbing against the wire screen. (R. pp. 223, 224). This detail, however, is not of the essence of the invention. Clearly, that is mechanical selection, and what Smith had considered the best mode for separating the dogs in a light weight box and for protecting them against injury during their confinement; for he says, the invention is not restricted to the exact details of construction disclosed herein, yet for the purpose of illustrating a particular embodiment, etc. (R. p. 223) and he further says "other means (that is to say other than fabric on wire mesh) may be employed to protect the dogs against injury in the stalls, without departing from the spirit of my said invention". (R. p. 224). Again:

> "At the front of the cage I have provided the door 6, opening upwardly and outwardly, being mounted by hinges as 7, 7, at the top of the cage and having the latch 8 near the bottom of the cage to hold it in position when closed. For the purpose of opening said door quickly when the latch 8 is released, I have provided the timbers 9, 9, extending above and out in front of the cage, as shown, and attached to the end thereof are the coiled tension springs 11, 11. The lower ends of the springs 11, 11, are attached in suitable eyes, as 10, 10, near the lower edge of the door 6". (R. p. 224; R. p. 222).

From the above quotation read in connection with the drawing, it is submitted that the gist of the invention as claimed, is the front exit door hinged to the top wall of the cage in cooperation with inclined members secured to the top of the frame, extending upwardly and outwardly beyond the face of the front door and connected at their outer ends with springs, the lower ends of the springs being

attached to the lower edge of the door whereby the door is thrown open upon release of the latch. The functioning of these cooperating elements in producing that movement is present in Respondents' cage. (R. pp. 71, 72, 73, 78, 143, 144, 145).

Upwardly inclining the members provides a greater arc in the upward and outward movement of the door, thereby lessening shock and eliminating excessive rebound of the opened door, thus avoiding the possibility of the door striking the dogs as they are released as well as maintaining the fixed position of the box until the operation is completed. These inclined members are shown to be divergent and the tension springs coiled. As to these details, no express limitation appears; for in addition to the reservation of all other forms or details of construction (R. p. 223) the specification further provides: "It will be apparent that other means may be employed to raise the door 6 * * * without departing from the spirit of my invention". (R. p. 224). So in moving the inclined members from divergent to non-divergent (R. pp. 71, 72, 73, 78, 143, 144, 145) and substituting rubber for coiled tension springs without change in function, there is no departure from the spirit of the invention thus described and claimed in the preferred form. We, therefore, think, the Courts below erred in finding that "the case is not one of showing the preferred form". (R. pp. 98, 371; *39 Fed.* [*2nd*] *97; 40 Fed.* [*2nd*] *175).*

(b) It is next to inquire if the case is one of limitation of the scope of the invention by the prior horse-starting art. In none of the horse-starting patents can we

find the essence of Smith's invention exhibiting his fundamental cooperating elements of hinging the upper end of the front exit door to the top wall of the box in combination with inclined members (whether divergent or non-divergent) extending upwardly and outwardly and connected at their outer ends with tension springs and latch for producing Smith's movement in opening the front door 6. Escude (R. pp. 324, 325) raises his net or barrier (stretched across the race track) by latch and springs from the end of two horizontal projecting members pivoted near the lower end and to the side of an upright; nor are his projecting members secured to the top of a frame, nor is his barrier in any way connected to the top wall of a frame because he has no top of a box or frame and no top wall at all. Stitzer (R. pp. 330, 331) opened his exit gate by latch or locking rod and springs surrounding and bearing against a post for sideways swinging outwardly but not upwardly; Stedeker (336, 337, 338) by latch and springs for vertical up-sliding movement of his bar but not outwardly; Andrew (R. pp. 318, 319) springs and weights and releasing levers for vertical up-sliding movement of his exit door but not outwardly; Whitehead (R. pp. 311, 312, 313) weights, springs or lift mechanism for vertical upward movement of his exit door but no outwardly. Briefly, in Stedeker, Andrew and Whitehead, the door slided up, in Stitzer it opened sideways, and in Escude, upwardly and outwardly, with no hinging of his barrier to the top wall of a box and with a horizontal projecting arm, not inclined upwardly, but se-

cured to two uprights. In none of these references is there a hint of hinging the upper ends of an exit door or barrier to the top walls of a box, no inclined member or arm (whether divergent or not) extending upwardly or secured to the top of a frame or box.

Each and all of these references exhibit open work affairs, uprights, bars, gates, doors or barriers sliding up or swinging sideways or pivoted to a standard or upright, as in Escude—mechanisms so radically different from Smith's operating means, incapable of producing movement in the same way, that no mechanic could, with the specifications and drawings of these Patents construct Smith's starting box out of any of them without the exercise of the inventive faculty.

Smith does not broadly describe and claim a single exit door which can or might be raised by springs connected to projecting arms secured to two uprights located on the outer or inner sides of a race course, as the adverse opinions below would have it. Smith's underlying invention adopted by Respondents is limited to and specially adaptable for dog starting. It is obviously useless for horse starting. The adverse opinions below are therefore believed to be erroneous in holding that the claim is limited in scope by the horse starting art to wire mesh partitions partially covered with fabric, divergent and not non-divergent inclined members supporting the springs and coiled tension springs, in that the Courts below have ignored Smith's fun-

damental cooperating elements designed and functioning to produce a specified movement for efficient dog starting and characteristically distinguishable from the horse-starting references.

(c) Coming to the File Wrapper (R. pp. 193 to 224 a) we are unable to discover that Smith was required to include these subordinate elements in order to secure the allowance of his claim; but on the contrary, each of the subordinate elements of wire mesh partitions partially covered with fabric and the divergent arms supporting the springs when included in broad claims reading on the horse-starting references were rejected and the rejections were acquiesced in by Smith thereby indicating that both Smith and the Patent Office had regarded these elements as non-essential and as involving neither invention nor novelty. It was only when Smith had narrowed the scope of his underlying invention, manifested by his fundamental cooperating elements to distinguish it from the horse-starting references that the claim was allowed, thus leaving these subordinate elements within the domain of a preferential form.

The first three rejected claims appear on pages 197, 198 of the Record. Each claim includes (a) (Claim 1) "wire mesh upon said frame, fabric covering a portion of said wire mesh"; (b) (Claim 2) "a net work upon said frame"; (c) (Claim 3) "a transparent covering upon a portion of said frame". They also include (a) (Claim 1) "a common exit door with special means for opening said exit door"; (b) (Claim 2) "a common front exit door for all the stalls and means for opening said exit door when released"; (c) (Claim 3) "a front door common for all of said

stalls, a latch for said front door, and springs opening said front door quickly when released". These three claims were rejected on each and every horse-starting reference; Whitehead, Andrew, Stitzer, Stedeker and Escude (R. p. 201). As none of them show a net work, wire screen, or transparent covering, or fabric "upon said frame", the necessary inference is that such covering or material involved neither invention nor novelty but a detail insufficient to distinguish it from any one or all of the references, otherwise the claim would have been allowed as a patentable improvement on each or all of them. Whitehead (R. pp. 311, 312, 313) and Andrew (R. pp. 318, 319) show separate exit doors sliding vertically upward by means of latch, weights, levers and tension springs, Stitzer (R. pp. 330, 331) separate gates swinging sideways, Stedeker (R. pp. 336, 337, 338) by latch and springs for vertical upward movement of his sliding bar and Escude by a single front net stretched across the course, pivoted to the side of his uprights and released by latch and springs. From the rejection therefore, Smith has disclaimed wire screen partitions partially covered with fabric as an essential element and further disclaimed the means for releasing his front door as disclosed by these references.

Upon cancellation (R. p. 202) Smith presented the following:-

> "In a starting cage for racing dogs a frame comprising a box-like structure divided into a plurality of compartments, individual rear doors for each of the compartments and a single front door pivoted at its upper end to the side walls of the frame, divergent inclined members carried by the said frame and extending beyond the face thereof

and having its (sic) outer ends in vertical alignment with the side walls of the box-like structure, springs secured to the said outer ends and to the door and a latch for securing the door in its closed position." (R. p. 202).

Turning to the drawings of Andrew (R. p. 319, Fig. 4) and Stitzer (R. pp. 330, 331) it will be noticed, that Andrew's sliding-up doors are each pivoted at both ends to the side walls of his frame, that Stitzer's sideway swinging gates are each pivoted at both ends to their posts, and likewise in Escude his net is pivoted at its upper end to the side walls of his upright (R. p. 324, fig. 1, elements c, m, fig. 2, m). Whilst Andrew and Stitzer have no single front door common to their separate skeleton stalls, Escude shows a barrier or net stretched across from standard to standard. It will also be noticed that while Escude's projecting member is neither divergent nor inclined, it is nevertheless carried by or secured to his standard, and has its outer ends in the plane of the side wall thereof and extends beyond the face of his barrier when closed.

It is not to be wondered at that the Examiner rejected the claim as follows: " 'vertical alinement with' implies incorrectly that the ends are directly above the walls. What applicant means is that the ends are in the same planes as the side walls. The Claim is rejected on each of Andrew and Stitzer in view of Escude which suggests the 'single front door', springs and latch. This produces structure fully equivalent to that claimed". (R. p. 203). It results from this rejection and Smith's acquiescence therein by cancellation (R. p. 204) that "divergent inclined members" carried by a frame and extending beyond the face

thereof and having their outer ends in vertical alinement with the side walls involved nothing patentable on Escude's horizontal non-divergent member carried by his standard or upright—in short, whether such a projecting member is divergent or non-divergent involves neither invention nor novelty. For if the examiner had regarded that the only novelty in the claim was the divergent inclined members as constituting the essence of the invention covered by that claim and differentiated from the art of record, the claim would have been allowed, but his rejection was that the claim was for a single front door, springs and latch which produced structure equivalent to Andrew and Stitzer in view of Escude.

Upon cancellation, Smith presented a new claim (R. p. 204) which after an amendment (immaterial to the matter in hand) (R. pp. 206, 205, 204) was allowed (R. p. 207), and became the single claim of the Patent. It was therefore the hinging of the front door to the top wall of the box in cooperation with inclined members secured to the top of the box extending upwardly and outwardly beyond the face of the front door with springs and latch, that distinguished the claim from the horse starting references and thus narrowed in scope, constitutes the essence of the claim and the invention, leaving the elements of wire mesh partitions partially covered with fabric and divergency of the inclined members as subordinate and non-essential in virtue of the rejections and Smith's acquiescence therein.

It is, therefore, submitted that (1) the invention is described and claimed in the preferred form, (2) the form or divergency of the inclined members supporting the

springs and the wire mesh partitions partially covered with fabric were regarded by the Patent Office and acquiesced in by Smith as non-essential to distinguish from the horse-starting patents, and (3) by the rejections and allowance, the scope of the invention and claim is limited to those fundamental cooperating elements hereinbefore set out and as so limited constitutes the distinguishing characteristic appropriated by Respondents.

POINT E.

Respondents have infringed the single claim of Patent No. 1,507,439 by substituting wooden boards for wire mesh partitions partially covered with fabric, arranging or locating the inclined members supporting the springs from divergent to non-divergent, and substituting shock rubber for coiled tension springs.

It is not pretended that Respondents are using any of the devices exhibited by the horse-starting references, nor is it disputed that they have adopted the fundamental cooperating elements functioning in substantially the same way for opening the exit door. (R. pp. 71, 72, 73, 76, 144, 145).

(a) Substitution of wooden boards for wire mesh partitions partially covered with fabric, not being indispensable to the novelty of the claim, is colorable. *Florsheim v. Schilling, 137 U. S. 64; Hotchkiss v. Greenwood, 11 How. 248; Hicks v. Kelsay, 18 Wall 670; Outlook Co. v. Malco Co., 299 Fed. 996 (C. C. A. 6); Wise, etc., Co. v. Bishop-Babcock Co., 240 Fed. 733 (C. C. A. 6.)* Leastwise, there is impairment of function, *King Axe Co. v. Hubbard, 97 Fed. 795 (C. C. A. 6); Nathan v. Howard, 143 Fed. 889*

(C. C. A. 6); and whether wooden boards are better or worse is of no consequence. *Hoyt v. Horne, 145 U. S. 302, 308, 309; Brush v. Condit, 132 U. S. 37; Temco v. Apco, 275 U. S. 319, 328; Smith v. American Electric Rabbit, etc., 21 Fed. (2nd) 366, 375, 376; Ibid, 26 Fed. (2nd) 1016.*

(b) Transposing the position of the upwardly inclined members from divergent to non-divergent is likewise colorable, there being no change in mode of operation or result for opening the front door. *Ives v. Hamilton, 92 U. S. 426; Brown v. Guild, 23 Wall 181; Winans v. Denmead, 15 How. 342; Machine Co. v. Murphy, 97 U. S. 120; Devlin v. Paynter, 64 Fed. 398 (C. C. A. 3); Metallic Ex. Co. v. Brown, 104 Fed. 345, 353 (C. C. A. 8); Hutter v. De Q. etc., 128 Fed. 284 (C. C. A. 2); Union Steam Pump v. Battle Creek, 104 Fed. 342 (C. C. A. 6).* If better or worse is of no importance, *Webster Loom Co. v. Higgins, 105 U. S. 580; Hoyt v. Horne, 145 U. S. 302, 308, 309; Temco v. Apco, 275 U. S. 319, 328; King Axe Co. v. Hubbard, 97 Fed. 795 (C. C. A. 6); Nathan v. Howard, 143 Fed. 889 (C. C. A. 6); Lourie v. Lenhart, 130 Fed. 122, 129 (C. C. A. 8); Smith v. American Electric Rabbit, etc., 21 Fed. (2nd) 366, 375, 376; Ibid., 26 Fed. (2nd) 1016.*

(c) Substitution of rubber springs for coiled tension springs is also colorable. See authorities above cited.

It is believed that Respondents' structure was designed to evade the spirit of the invention by appropriating all that is of value; so, whether the function of the elements of the claim are impaired or bettered by such evasions but which remain substantially the same, Respondents have infringed.

In the opinion of the District Court (R. p. 98) *39 Fed. (2nd) at page 97*, it is stated that respondents omit "apparently the springs themselves (Defendants' Exhibits E. and F). In lieu of springs the single front door is opened manually with the assistance of counterweights". This is error. Defendants' Exhibits E. and F. (R. pp. 144, 145) confirm the uncontradicted testimony (R. pp. 71, 72, 73, 76) and plainly show the airplane shock rubber with snap hooks secured to the outer ends of the inclined members and to the bottom of the door. Nor is the door opened manually with the assistance of counterweights; that is done by pulling the lever releasing the latch. (R. pp. 72, 73). On the other hand, the counterweight is plainly an addition, which, of course, is immaterial. *Temco v. Apco, 275 U. S. 319, 328.*

POINT F.

Patent No. 1,507,440 is valid.

(a) The Courts below decided that this Patent is invalid for want of invention and novelty, but if valid is not infringed. (R. pp. 95, 96; 368, 371) *39 Fed. (2nd) 96; 40 Fed. (2nd) 175.*

In his specification, Smith says: "My invention relates to means for concealing the track and conveyor car in a mechanical lure conveyor for dog racing courses. The object is to provide a suitable housing for concealing the track and conveyor car from the dogs and which form a continuous housing around the race course with a continuous opening upon the side towards the course". (R. p. 255). Again, "In the foregoing construction, it will be seen that the entire track and conveyor car are concealed from the

dogs, the only portion being exposed to view are the arm and parts mounted thereon." (R. p. 256). Nor is the invention intended to cover or does cover housing other than for dog racing apparatus having a laterally extending arm, for each claim contains the relative and limiting introductory phrase "In a housing for covering tracks and cars having laterally extending arm operated upon said track", etc., and "in a continuous housing for concealing", etc. (Claim 1, 2, 3, R. pp. 256 and 256a). And furthermore, the Examiner indicated that the claims be thus confined as a basis for his consideration and allowance. (R. p. 233).

Keeping in mind this limitation, the patent relates to the casing element called for in Patent No. 1,379,224, and a result of a separate application co-pending with and divided out of that Patent Application as suggested and required by the Examiner. (R. pp. 168, 169, 170). Accordingly, it is a subcombination patent, operating conjointly as to use with those elements of Patent No. 1,379,224, in performing the subordinate interdependent function of concealment and is therefore expressly limited in its utility to perform its appropriate function in a dog racing device having a laterally extending arm and of which it forms a part. *Philadelphia, etc., R. R. Co. v. Dubois, 12 Wall. 47; Gill v. Wells, 22 Wall 1; Canda v. Michigan, 124 Fed. 486, 489, 490 (C. C. A. 6); Thomson-Houston v. Black River, etc., 135 Fed. 759 (C. C. A. 2); Thomson-Houston v. Elmira, 71 Fed. 396 (C. C. A. 2).*

Minus the expressed relation and limitation, the housing described is minus utility. That relation suggested the idea of concealment, but how and in what man-

ner? There may be many ways for carrying it out but any manner is necessarily conjoined with the disclosure embodying the limitation, thus constituting an improvement on or addition to the original invention.

This contribution is exhibited by the Walsh Patent, which has as its fundamental element a laterally extending arm, angular tough it be, yet operating on the track in vertically inclined planes. Like Smith, he realized the necessity of concealing his mechanisms from the dogs, and he stepped in that direction, not by means of a housing but by means of a relatively high fence. As heretofore shown, Smith carried out this idea of concealment, but in a radically different way; by placing his fence on the far side of the rail track and from its upper end bringing it over towards the outer side of the course, thus producing cooperation in the free movement of his arm through the longitudional opening and that of concealing the mechanisms from the dogs. It never occurred to Walsh or to any mechanic having his patent before him to conceal his mechanisms other than by means of a fence, but the same idea of concealment occurred to Smith and he carried it out by another and different means. *Hobbs v. Beach, 180 U. S. 383, 392, 393.* So, what would have occurred to a mechanic without his exercising the inventive faculty, is clearly uncertain, inconclusive, unreliable and hindsight skill. *Hobbs v. Beach, 180 U. S. 383, 392; Webster Loom v. Higgins, 105 U. S. 580; Kremetz v. Cottle Co., 148 U. S. 556; Potts v. Creager, 155 U. S. 597, 608; Leeds & E. Co. v. Victor, etc., Co., 213 U. S. 325, 332, 333; Kurtz v. Belle Hat, 280 Fed. 277, 281 (C. C. A. 2).*

Slotted tubing, housings for third rail, coverings for loading platform, canopies at the entrance of hotels, theatres and residents, are not adaptable for or combine all the elements, functioning substantially in the same way as the housing in suit, or having the same objects and purposes and producing or being capable of producing the same result of covering or concealing tracks and cars having laterally extending arm operating on a dog race course *(Eibel Process Co. v. Minnesota Co., 261 U. S. 45, 66; Seymour v. Osborne, 11 Wall. 516, 542, 543; Canda v. Michigan, 124 Fed. 486, 492.* But Bertram (R. p. 343) is said to anticipate.

Glancing at Bertram's specifications and his third rail cover, it was designed with a view of protecting the third rail from the weather, snow, sleet, etc. He had no purpose of covering or concealing tracks and cars having laterally extending arm operating on a dog race course. Bertram's cover consisted of a bottom board, a vertical side board insulated, a top board and two side boards separated by a longitudinal opening, all nailed and joined together to form a continuous cover and supported integrally by reason of its small size. Ordinarily, whilst size, proportion and degree are inconsequential factors, in Bertram's cover, they are essential and functional since any increase in size, proportion or degree, would be objectionable and unnecessary. It is so small, that the rigidity of its frame is inherent in the structure, requiring no posts, timbers attached to posts, boards or truss rods adapted to support the side above the continuous opening. This furnishes an additional reason why Bertram's construction was limited to its own special purpose. Smith's housing

could not stand without posts, timbers, boards and truss support of his top side.

It is argued that Smith's changes being structural, any mechanic could have done it, but, in rejoinder, such a change produces a more useful, beneficial and different result coupled with the presumption arising from the grant and the extensive use of Smith's housing in the dog racing art. *(Seymour v. Osborne, 11 Wall. supra; Canda v. Michigan, supra).* So Bertram's patent cannot be considered as an anticipation since it does not disclose the purpose, means and mechanism for accomplishing the end of the patent in suit, and which are restricted by Bertram's disclosure to the accomplishment only of a substantially different and limited purpose. For, accidental results, not intended and not appreciated, do not constitute anticipation. *Eibel Process v. Minnesota & Co., 261 U. S. 45, 66; Gordon Form & Co. v. Wolcott & Co., 32 Fed. (2nd) 55 (C. C. A. 6)*, and cases there cited. *Western Electric v. LaRue, 139 U. S. 601; Hobbs v. Beach, 180 U. S. 383, 392; Tilghman v. Proctor, 102 U. S. 707, 711.*

Since, therefore, Bertram's cover was not designed by him, nor adapted nor actually used for the performance of the function of concealing lure conveyor mechanism having laterally extending arm operating on a dog-race course, it is not anticipation that Bertram's cover might, by modification, be made to accomplish the function of the patent in suit. *Topliff v. Topliff, 145 U. S. 156, 161; Seymour v. Osborne, 11 Wall. 516; National Hollow B. B. Co. v. Interchangeable Co., 106 Fed. 693 (C. C. A. 8); Canda v. Michigan, 124 Fed. 486 (C. C. A. 6); Wayne v.*

Benbow Brammer, 168 Fed. 271, 277. Nor does it constitute anticipation and no defense to a claim for infringement, that one or more parts of a patented improvement may be found in one old patent or publication, and others in another and still others in a third. It is indispensable that all of them or their mechanical equivalents be found in the same description or machine, where they do substantially the same work by substantially the same means. *Bates v. Coe, 98 U. S. 31, 48; Imheuser v. Buerk, 101 U. S. 647, 660; Seabury v. Am. Ende, 152 U. S. 561, 568; Hobbs v. Beach, 180 U. S. 383.* And as "that which infringes if later, will anticipate if earlier", Bertram would not infringe on Smith for he omits every element of the claim except boards and the longitudinal opening.

(b) Turning to the File Wrapper (R. pp. 225 to 241) this claim (R. p. 234) was allowed and remained allowed at all times. The rejections of other claims had no limiting effect as to this Claim 1. Original Claims 1 to 4 (R. pp. 229, 230) were rejected as indefinite and as aggregations, and the Examiner suggested amendment so as to confine them to a housing for covering or concealing the car having a laterally extending arm. (R. p. 233). Conformably to the suggestion, four new claims were presented (R. p. 234). New Claim 2 (being Claim 1 of the Patent) was allowed. (R. pp. 234, 237). New Claims 1, 3, and 4 were rejected on Bertram (R. p. 237), cancelled (R. p. 238) and amended new claims 2 and 3 presented (R. p. 238). As thus amended, these new Claims 2 and 3 were allowed and Claim 2 (Claim 1 of Patent) again allowed. (R. pp. 239, 240, 241).

Inserted amended Claims 1 and 4 rejected on Bertram, as in Bertram, made no provision different from Bertram for supporting any side of the housing (R. p. 343); inserted or amended Claim 3 broadly claimed "means for supporting", etc., whereas Bertram's means of support was integral in his cover by virtue of its size, or by his inverted L-shaped third rail functioning accidentally as a bracket. (See b, b, Fig. 1 of drawing, R. p. 343). So that, on the cases cited in our discussion of File Wrapper of Patent 1,379,224, the estoppel as to allowed claims previously rejected on Bertram is, that Smith is estopped from maintaining that these amended claims as allowed, cover Bertram's combination, or from now claiming that these claims have the same breadth as the amended and rejected Claims 1, 3 and 4, namely, that the support of the side above the continuous opening is integral in the structure or by means of a bracket which, of course, has no truss function. Nowhere in Bertram is a truss function discernable or even suggested; nor is it pretended that the side of Respondents' housing above the continuous opening is supported as in Bertram, nor that Respondents are using Bertram's cover. *Griswold v. Harker, 62 Fed. 389, 393 (C. C. A. 8); Imperial Machine v. Blakeslee, 262 Fed. 419, 423 (C. C. A. 2).*

POINT G.

Respondents have infringed Claim 1 of Patent No. 1,507,440 in letter and spirit.

(a) In letter and spirit, Respondents' housing reads directly on this Claim (R. pp. 71, 72, 73, 75, 76, 78, 142, 117). Respondents' rod is attached to the closed or rear side of the housing and is adapted to support the side

of the housing above the continuous opening by being fastened to an over-hanging beam in continuation of the side above the continuous opening, denominated cantilever, and producing a triangular tie or truss—a cantilever truss. There is also an additional truss rod or truss (R. p. 142). As the claim reads "truss rods adapted to support, etc." it comprises every kind of truss construction. *(Webster's New Int. Dict. [Merriam Ed.] 1927, verbo Truss in Arch-Engin.).* There is substantial identity of function, operation and result. *Sanitary Ref. Co. v. Winters, 180 U. S. 30; Smith v. American Electric Rabbit, etc., 21 Fed. (2nd) 366, 372, 373, 374.*

It is respectfully submitted that the decision and decree of the Sixth Circuit Court of Appeals be reversed.

JOHN E. SATER,
E. HOWARD M'CALEB,
Counsel for Hannah M. Smith, Administratrix, Petitioner.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

HANNAH M. SMITH, Admrx. of the Estate of OWEN P. SMITH,
Petitioner,

v.

SPRINGDALE AMUSEMENT PARK, LTD., PAUL M. WILLIAMS and GERALD BROWN,
Respondents.

No. 315.

BRIEF FOR RESPONDENTS.

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Respondents.

No. 315.

BRIEF FOR RESPONDENTS.

STATEMENT.

We regret not to have been able to make this brief much shorter than it is, but we were unable to do so for the two following reasons:

(1) We cannot accept, as sufficiently full, clear and accurate, the statements as to facts and the propositions of law as applied to the true state of facts in this case, as we find the same set forth in petitioner's brief.

(2) As petitioner would seem to rely largely—we had almost said exclusively—on the specious but utterly fallacious opinion of the District Court in the case of Smith v. American Rabbit Racing Assn. (21 Fed., 2nd, 366) and on the action of the C. C. A. for the Fifth Circuit in agreeing with *"the conclusions"* reached by said District Court in that case (26 Fed., 2nd, 1016), we have felt constrained, not only to state the facts in and the history of the case at bar and of said case in the Fifth Circuit all with great particularity, but also to prove, as we believe we have succeeded in doing, that the said opinion of the District Court in said suit in the Fifth Circuit is utterly fallacious in its reasoning as well as in its conclusions, and that, consequently, the action of the C. C. A. for the Fifth Circuit in that suit, in agreeing with *"the conclusions"* of the District Court in that case and, for that alleged reason, affirming the interlocutory decree entered by said District Court in that case, was erroneous. Indeed, but for said action of said C. C. A. for the Fifth Circuit and the subsequent refusal of the C. C. A. for the Sixth Circuit, in the case at bar, to follow said Courts of the Fifth Circuit in that case, the instant case would not be before this Court.

At the October Term, 1928, of this Court, George W. Heintz and American Electric Rabbit Racing Association, who were defendants in the case in the Fifth Circuit, in which case the petitioner here was plaintiff (the decisions in which case are reported in 21 Fed., 2nd, 366, and 26 Fed., 2nd, 1016), in a suit under the identical Smith patents before this Court in the case at bar, petitioned this Court for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit; but said petition, in Case No. 449, October Term, 1928, was then denied by this Court (see 278 U. S., at page 626).

When we, as counsel for said petitioners in said case in the Fifth Circuit, petitioned this Court for the extraordinary writ of certiorari in that case, we did so for the reasons set forth in that petition, although, at that time, the C. C. A. for the Sixth Circuit had not yet rendered its opinion in the instant case now before this Court (the opinion in Smith etc., Appellant, v. Springdale Amusement Park, et al., found at R. 368, and also reported in 40 Fed., 2nd, 173).

At that time, apart from other reasons urged by us in support of said petition, the only opinion rendered in the instant case was that of Hickenlooper, J., rendered June 28, 1928, found at R. 89, and also reported in 39 Fed. (2nd), 92; so that, when said petition was presented to and denied by this Court, the then petitioners could not allege that there was then a conflict between the decisions of two U. S. Courts of Appeal (as could the plaintiff-petitioner in their petition to this Court in the instant case), but merely that the said opinion of Judge Hickenlooper, holding the District Court, S. D. Ohio, W. D., was in conflict with the opinion of the District Court (by Burns, J.) and the affirmance of the decree of said District Court by the C. C. A. for the Fifth Circuit in said suit against Am. Electric Rabbit Racing Assn., and the other reasons set forth in said petition, which petition this Court denied as aforesaid.

However, neither the mere denial by this Court of said petition in the case of Heintz et al. v. Smith (No. 449, October Term, 1928, see 278 U. S., at page 626), nor the mere granting of the petition for certiorari in the case at bar, in which latter case Hannah M. Smith, Administratrix, etc. is the petitioner, can be considered as equivalent to either an affirmance or reversal of the decree sought to be reviewed by either of said petitions for certiorari (see this Court in

Hamilton Shoe Co. v. Wolf Brothers, 240 U. S., at page 258).

Nor could it be successfully contended here by petitioner in the case at bar that the decree in said suit in the Fifth Circuit, in the case of Smith, Admrx. v. American Electric Rabbit Racing Association, Heintz et al. (reports of which case are found in 21 Fed., 2d, 366, and 26 Fed., 1016), is binding by way of estoppel on any of the respondents who are before this Court in the case at bar (Springdale Amusement Park, Limited, Paul M. Williams and Gerald Brown), for the following reasons:

(1) None of the respondents in the case at bar (Springdale Amusement Park, Limited, Paul M. Williams and Gerald Brown) was a party to, or in privity with any party to, said suit in the Fifth Circuit.

(2) The decree in said suit in the Fifth Circuit, as appears from the opinion of the District Court in that case (21 Fed. 2nd, 366) and from the record in that case brought here with said petition for certiorari in said case in this Court, No. 449, October Term, 1928 (see 278 U. S. 626), was an *interlocutory* decree for an injunction and accounting, not a *final* decree. And such a decree (an *interlocutory* decree) cannot be invoked as an estoppel even against the very parties to the suit in which such *interlocutory* decree was entered.

Simmons Co. v. Grier Bros. Co., 258 U. S. 82;
Luminous Unit Co. v. Freeman Sweet Co., 3 Fed. (2nd), at page 579 (C. C. A. Seventh Circuit);
Bassick Mfg. Co. v. Larkin Automotive Parts Co., 123 Fed. (2d), at p. 93, and cases there cited.

Moreover, although George W. Heintz was one of the several defendants in the said suit in the 5th Circuit

against the American Electric Rabbit Racing Assn. and was petitioner to this Court in the said case No. 449, October Term, 1928, in which this Court denied the petition for certiorari (see 278 U. S., at page 626), and although the same George W. Heintz was named as a defendant in the bill of complaint in the instant case (see R. 1), nevertheless said Heintz filed a motion to dismiss the bill as to him, which motion was sustained by the District Court, on the ground that said Heintz was not an inhabitant of the District and that it did not appear that he had committed acts of infringement, or that he had a regular and established place of business, in the District (see R. 89, and decree at R. 100); and the action of the said District Court in so sustaining the motion to dismiss the bill as to the said Heintz was never questioned by the plaintiff-petitioner and was not made a subject of any of said plaintiff's assignments of error (see R. 103-105).

Therefore, it follows: that the case at bar stands as a case against Springdale Amusement Park, Ltd., Paul M. Williams and Gerald Brown, as the only defendants-respondents in this case; and the only questions in this case relate to the validity of the three Smith patents in suit, and as to whether or not the said three last-named defendants, or any of them, infringed all, or any, of said three Smith patents.

It appears from the opinion of the District Court in the case at bar (Judge Hickenlooper's opinion, found at R. 89-99), when this case came on for final hearing in the District Court, on Feb. 20, 1928, it came on for hearing on the pleadings already in the case and on the motions to dismiss of the several defendants, as specified in the opinion of Judge Hickenlooper at R. 89, and on the evidence adduced at the trial, a statement of which evidence is found at R. 68-88; but it was understood by the Judge of the

trial Court and the counsel in the case, at the time this case was submitted to the District Court that, in the event any of the motions to dismiss made by the separate persons who had been named as parties defendant in the case should be overruled, then and in that event the separate answer of the Springdale Amusement Park, Ltd., found at R. 21-56, should be treated as the answer of such of the parties named as defendants in the case whose motions to dismiss might not be sustained by the District Court. With that understanding, the said answer of Springdale Amusement Park, Ltd., found at R. 21-56, was considered as also the answer of the defendants Paul M. Williams and Gerald Brown, whose motions to dismiss were overruled by the District Court in its said opinion, rendered after the final hearing of the case (see opinion, at R. 89, and decree, at R. 100, which decree also finds that none of the claims in issue of any of the three patents in suit had been infringed by any of the defendants before the Court, and dismissed the bill of complaint).

There is and has been no dispute in regard to these matters, and we simply refer to them here so that this Court may understand the situation as it actually existed and how and why it so happened, in the circumstances, that no separate and specific answer was filed in this case by said defendants, Paul M. Williams and Gerald Brown.

PATENTS DECLARED UPON IN THE BILL.

The bill of complaint in this case, which was filed on Aug. 19, 1927 (R. 1-13), declares upon and charges infringement of no less than eight patents, all of which were granted to the same Owen P. Smith.

One of these patents (Smith patent 1,038,504, of Sept. 10, 1912), found at R. 276, is a patent of which we shall

have something to say later on in this brief. Concerning said Smith patent 1,038,504, the bill, after referring to said patent by its number and date (see R. 2) states:

> "The devices of said patent made, used and sold by said Owen P. Smith and said plaintiff have been marked 'Patented', or with suitable abbreviation thereof, together with the date of said patent."

And in the bill of complaint in this case, after referring to and pleading the eight Smith letters patent declared upon in the bill, the bill states, in Clause 11 thereof, at R. 8, as follows:

> "The said inventions or improvements of said letters patent, respectively, are capable of conjoint use as well as separate use and have been used conjointly as well as separately by plaintiff and said Owen P. Smith in various parts of the country," * * *

After the answer in this case had been filed on Sept. 27, 1927 (R. 21), the plaintiff was interrogated by defendant by the formal interrogatories found at R. 56-58 and by specific reference to the eight Smith patents declared upon in the bill, as to which of the said several eight patents the plaintiff would rely upon at the hearing, and for plaintiff to state what claim or claims of any of the eight Smith patents declared upon in the bill plaintiff would rely upon at the hearing. The said interrogatories were filed on Sept. 28, 1927—the day after the answer in the case had been filed. Afterwards, on Oct. 26, 1927, plaintiff filed its answer to said interrogatories, stating as follows (see R. 60):

> "Plaintiff will rely upon all four claims set forth in patent No. 1,379,224, upon the three claims of patent

No. 1,507,440, and upon the single claim of patent No. 1,507,439.

Plaintiff will not rely on any other patents or any other claims than those above mentioned.

Plaintiff will not rely upon patent No. 1,038,504, or upon patent No. 1,410,842, or patent No. 1,591,569, or patent No. 1,630,811, or patent No. 1,638,112."

In other words, although plaintiff had deliberately declared upon and charged infringement of said eight Smith patents, after the defendants' answer had been filed and on Oct. 26, 1927 plaintiff solemnly declared in its verified answer to defendants' interrogatories that, at the final hearing of the case, she would rely only upon three of the Smith patents declared upon in the bill, namely, Smith patent 1,379,224; Smith patent 1,507,439 and Smith patent 1,507,440, and that plaintiff would not rely upon any of the other five Smith patents declared upon in the bill.

It should also be noted here that, although in plaintiff's said answer to defendants' interrogatories plaintiff, by her counsel, announced that she would rely upon *all four* claims of patent 1,379,224; nevertheless, at final hearing, as appears from the opinion of the District Court, at R. 89, and from the decree of the District Court at R. 100, plaintiff relied only upon Claims 1 and 2 of Smith patent 1,379,224.

THE THREE SMITH PATENTS IN SUIT,

Nos. 1,379,224; 1,507,439 and 1,507,440.

We shall consider the three Smith patents in suit in the order of their dates and numbers, with the purpose of ascertaining, in each instance, what is the particular; alleged invention illustrated and described (disclosed) which Smith *particularly pointed out and distinctly claimed as*

his invention (as required by Sec. 4888 R. S. U. S.) *by the claims in issue of said patents.* This is a most important thing to do, because the very basis or consideration justifying the grant of letters patent for an invention is a full and complete *disclosure* by the patentee, in the specification and drawings of his patent, of the thing which he *claims* as his invention.

> Merrill v. Yeomans, 94 U. S., at page 573;
> Bates v. Coe, 98 U. S., at page 39.

As the C. C. A. for the Second Circuit aptly puts it, in Typewriters Hilliardized v. Corona Co., 43 Fed. (2nd), at page 964:

> "Of course, a patent creates a monopoly in nothing not both *described* and *claimed.*" (Italics ours.)

The drawings, specification and claims of this Smith patent No. 1,379,224, dated May 24, 1921, applied for Sept. 4, 1919, are found at R. 186-192c.

In the case of this Smith patent, as is also true of the two other Smith patents in suit, though the drawings illustrate, the specification describes and the claims define *only one particular construction of device,* nevertheless the specification, as the same was originally filed in the Patent Office, as is also true of the specification of the patent as granted (see R. 156 and R. 189), contains words to the effect *that the invention is not restricted to the details of construction disclosed by the drawings and specification.* And, because of similar statements in the specification of all three of the Smith patents in suit, counsel for petitioner contend in their brief here that, notwithstanding what is illustrated and described in the drawings and specification and particularly specified in the claims in issue of said

patents respectively, nevertheless the fact that such general statements remained in and are found in the said Smith patents as granted, *ergo* it follows: (a) that the claims may be so construed as to read out of them elements or conditions expressly specified therein; or (b) that the claims are not to be read in the light of the particular structure illustrated and described in the drawings and specification but must be *enlarged*, by reason of such general statements in the specification as those which we have italicized above.

Such contention is not only fallacious, involving, as it does, a *non sequitur*, but also because, by the decisions of this Court and what this Court says in Railroad Co. v. Mellon, 104 U. S., at pages 118-119, and cases there cited, in respect to precisely the same situation as that shown to exist with respect to the history in the Patent Office of each of these three Smith patents in suit, this Court has met and refuted precisely such fallacious contention.

This Court there holds (see 104 U. S., at pages 118 and 119):

(1) That "the scope of letters patent should be limited to the invention covered by the claim, and that though the claim may be *illustrated*, it cannot be *enlarged* by the language used in other parts of the specification." (Italics ours.)

(2) That where the drawings and specification illustrate and describe, and the claims, *read in the light of the thing illustrated and described*, clearly show that what the patentee had invented and *actually disclosed* by his patent is a thing of a particular construction—a particular means of effecting a certain result—the mere fact that there remains in the specification of the patent as finally granted

any such vague or general statement as that which we have set forth above is of no avail to the patentee. Notwithstanding any such vague or general statement in the body of the specification, *what counts is the claim, read in the light of the thing illustrated in the drawings and particularly described in the specification.*

Hoping, by the above statement, to save the Court's time (as the above principles apply to all of the three Smith patents in suit) and at once meet the fallacious contentions with which petitioner's brief is so pregnant, we shall now, with more profit, we believe, be able to point out the particular thing—the only particular thing—*disclosed* by the Smith patent No. 1,379,224 and claimed by Claims 1 and 2 thereof.

By referring to this Smith patent, either to a printed copy thereof, which we trust the Court will have before it at the argument, or to the drawings and specification of that patent as reproduced at R. 186-192c, the Court will see that in Fig. 1 is illustrated a plan view of a track for dog racing. The track or race-course as illustrated is elliptical in form, as is the case with tracks for horse racing, although, of course, it might be of circular formation, and, as described in the specification and illustrated in Fig. 1 of this drawing, an electrically operated car is provided to run on rails and be enclosed in a housing for the purpose of concealing the car from the view of the hounds during the race and for protecting the electrically operated car from exposure to the elements, as illustrated in Fig. 2 of the drawing. As described in the specification, the tracks, housing or casing and the car, while it travels around the race course, are all located on the *outer* side of the race course, so that (see right of Fig. 1 at the upper part of said figure) after the car, which carries the fixed, projecting arm with a wheel at its outer end and the rabbit

located above the wheel (see Fig. 2), has made a complete course around the track, the car is switched onto a side track and entirely outside of and away from the housing or casing; and, when this is accomplished, a door closes behind the car, and thus the car with its projecting lure carrying arm and wheel are completely removed from the race course proper and disappear from the view of the hounds.

Inasmuch as the only claims of this Smith patent which are in issue in this case are claims 1 and 2, which claims have to do with a combination of elements consisting of a race course for dogs, a casing or housing extending around the *outer* side of the race course, a track for the car to run upon, and an arm carried by the car and extending horizontally from the car over the track and adapted to carry a lure, the said arm being *hinged* to the car at the inner end of the arm and provided with a wheel at the outer end of the arm, the supposed invention the subject-matter of Claims 1 and 2 having nothing to do with friction brakes, tripping mechanism etc., which are the additional features of the supposed invention entering into the combinations of devices claimed in Claims 3 and 4 of this patent, we shall confine our discussion of this Smith patent to the arrangement or combinations of elements the subject-matter of Claims 1 and 2, and particularly to the supposed invention as illustrated in Figs. 1, 2 and 3 of the patent.

After stating the general objects of the invention and referring to what the particular figures of the drawings illustrate, the specification of the patent states that the race track or course for the dogs may be *"circular, oval, kite-shaped, or any similar shape"*; that the race track is fenced in on one side by the fence 31, which fence, as appears from Fig. 1 of the drawing, is located on the *inner*

side of the track. On the other side (*the outer side*) of the race course (see Fig. 1), there is an enclosure or housing or casing, 31-a (see Fig. 2), which, as shown and described in the specification of the patent and as particularly specified in Claim 1 of the patent, extends around the *outer* side of the race course. There is a reason, in the principle of operation and construction of the particular device illustrated and described in this Smith patent, for locating this housing or casing, in which the car which carries the lure is encased during its course around the track, at the *outer* side of the race course, and it is this: That, as described in the specification of the patent and as the operation of the device is described in the patent, after the car with its projecting arm, lure and wheel has once made its complete course around the track, it is shunted off onto the switch shown at the right-hand top of Fig. 1 and completely outside and away from the race-course, as we have before stated.

This Court will take judicial notice of all matters of common knowledge, as for example, in the case of Brown v. Piper, 91 U. S. 37, it took notice of the construction and principle of operation of the ordinary ice cream freezer. Similarly, we submit, this Court may take notice of the fact that where there is question of running a car on wheels on a track, at the curves, in order to prevent the car by its momentum from leaving the track, the outer rail is invariably placed at a little higher level than the inner rail. That is true in the matter of railroad construction generally and would be inevitably true, although this Smith patent does not specifically refer to that fact, in respect to the device of the Smith patent, when making the curves on the track illustrated in Fig. 1 of the Smith patent. Therefore, Smith, manifestly having in mind such a construction and also one in which, at the end of the course, the car

was shunted onto the switch above referred to, was concerned with the manifest proposition that, as the outer rail would have to be a little higher than the inner rail, at the curves, the tendency would be, when the car was located on the *outer* side of the race course, as illustrated and described in his patent, if the arm which carries the lure were rigidly fastened to the car at the inner end of the arm and not *hinged* as illustrated, described and claimed,, and not provided with a wheel at its outer projecting end, when the car struck the curves, or if there was any irregularity in the bed of the race course, there would be danger of the outer end of the arm, which carries the lure, coming in contact with the ground and thus damaging the arm or breaking it off. This is manifestly the reason why, in the drawings and specification which provide for locating the car, housing or casing etc. on the *outer* side of the race course, Smith (see particularly Figs. 2 and 3 of the drawings) not only clearly illustrates and particularly describes the inner end of the arm as *hinged* to the body of the car, so as to permit some play and upward and downward movement to the said arm, but also describes and illustrates the said arm as *provided with a wheel at its outer end, to support the arm at the projecting end thereof*, and why he also describes and illustrates, just above the numeral 13 in Fig. 2 of his patent, a spring attached at one end to the inner end of the arm and at the other end to the body of the car, so as to tend to keep the arm down, *so that the wheel at the outer end thereof shall keep in contact with and rotate upon the bed or surface of the race course.*

In the specification of this patent, at R. 191, it is stated:

> "At 25, on the side of said car toward the dog race course, I have hinge-mounted the arm 26 extending

through the opening between the side boards 10 and 13 of the housing, and out towards the middle of the dog race course. Near the outer end of said arm I have mounted a wheel 28, preferably with rubber tire to rotate on the ground, and support the end of said arm 26. Above said wheel I have provided a platform 27 for mounting upon it the lure 29 in shape of a stuffed rabbit or other suitable object to entice the dogs to chase it. At the point 40" (see Fig. 2) "I have connected to said arm 26 a spring, extending to and attached to the frame as shown, designed to hold the said arm, and the wheel at the end of said arm, down with the wheel in contact with the ground."

In Claim 1 of the patent it is specifically stated that the casing or housing extends "around the *outer* side of the race course", and although it is true that in Claim 2, the covered rail, track etc. is described as "*on one side*" of the race course, nevertheless, when that claim is construed in the light of the construction and operation of the device as illustrated and described in the patent, that "*one side*", on which the tracks, car and housing or casing are located, must be the *outer* side of the race course, or else the apparatus described and illustrated in that patent will not operate in the manner illustrated and described in that patent, *which operation and construction (see upper part of Fig. 1 at R. 186) contemplates, when the race is over, taking the car with its projecting arm, lure and wheel entirely outside of the casing or housing and entirely outside of the race course and onto the switch illustrated at the top of Fig. 1 of said patent.* The arm and lure of this Smith patent are *not "made to disappear into the casing by means of switching the car"*, as incorrectly stated at foot of page 4 of Petitioner's brief.

The importance of this, we believe, was not fully appre-

ciated by the Court of Appeals for the 10th Circuit in its decision in respect to this patent, probably because this point was not clearly brought out in that case, but it is an important point, having to do with the principle of construction and operation of the particular device illustrated, described and claimed by Claims 1 and 2 of this Smith patent, and explains, as we have endeavored to point out, why, in this device, Smith found it necessary (in point of fact this location of the casing at *outer* side is specifically claimed in Claim 1 and implied in Claim 2) to provide his device with a wheel at the outer end of the arm, so that the said wheel would rest upon the ground and support that arm at its outer end, and why he also found it necessary to *hinge* the arm. Also, the inevitable effect of placing his housing, tracks, car etc. on the *outer* side of the race course was to cause the hounds, in quest of the lure, to take the longer course on the track around the curves, thus also, especially at the curves of the course, keeping the hounds more in view of the spectators.

However this may be, the fact remains, as a reference to the specification and drawings and to Claims 1 and 2 of this Smith patent will show, that in Claim 1 he describes the casing or housing as extending around the *outer* side of the race course and the arm which carries the lure provided with a wheel rotatably mounted on and supporting the arm at the projecting end thereof, while in Claim 2 he describes this arm as *hinged* to the car and provided with a wheel rotatably mounted near the end of the arm and resting upon the ground. Indeed, although Claim 1 of this patent does not describe the arm as *hinged* to the car, nevertheless, it would seem that the hinging of the arm to the car must be an implied element or condition of Claim 1, as it is a positive element or condition of Claim 2, because an arm rigidly fastened to the end of the car and yet

provided with a wheel rotatably mounted on and supporting the arm at its projecting end would hardly accomplish the purpose contemplated by the Smith patent, as such a rigid, unhinged arm (the car, housing etc. being located at the *outer* side of the race course, as illustrated and described in the patent) might be broken off at the curves, or in meeting unevenness or obstructions on the race course.

As to the housing or casing in this Smith patent, which housing or casing forms an essential element of the combinations forming the subject-matter of Claims 1 and 2 of this Smith patent, that housing is described in the specification of the patent, about the middle of R. 190. This housing or casing of patent No. 1,379,224, illustrated particularly in Fig. 2 and described in the paragraph about the middle of R. 190, which is made an element or feature of Claims 1 and 2 of this patent, in general outline, although not in details of construction, and in its purpose of housing the conveyor car and tracks etc., is quite similar to the housing illustrated in Fig. 1 of Smith patent 1,507,440 (another one of the Smith patents in suit) but differs from the housing of said Smith patent 1,507,440, found at R. 254, in the following respects:

The housing shown in Fig. 2 of this Smith patent 1,379,224 and described at R. 190 has no adjustable stay rods, turn buckle etc., such as illustrated, described and claimed in said Smith patent 1,507,440, found at R. 254, for keeping the roof from sagging. The arrangement of the posts of the housings in these two patents is very similar, but in the housing of this Smith patent 1,379,224, as we have said, there are no adjustable stay rods, turn buckle etc. for tightening the roof in the event of sagging. Instead of that (see Fig. 2 of Smith patent 1,379,224 at R. 187, and described in the specification at R. 190) it is stated:

"For the purpose of supporting the roof 1ª of the housing, and the overhanging side toward the track, I have provided the brackets 6 mounted upon the inner sides of the posts 1, as shown, and I have also provided a truss rod 8 which is attached to the roof 1ª, passes over the top of the post 1, and is suitably anchored in the ground outside of the housing as at 9."

The claims of this Smith patent 1,379,224 which are in issue here are Claims 1 and 2, which we here recite, purposely italicizing certain portions of said claims, because the express conditions, limitations and elements named in the said italicized parts of the claims are entirely absent in defendants' device, as hereinafter pointed out and as admitted in petitioner's brief:

"1. In a dog racing amusement, a race course suited for dogs, a casing *extending around the outer side of the race course*, and provided with a longitudinal opening, a mechanical conveyor including a track extending around the race course and located within the casing, and a conveyor car mechanically operated upon said track and provided with an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure, *and a wheel rotatably mounted on and supporting the arm at the projecting end thereof.*

2. In an amusement, the combination of a race course suited for dogs, a covered rail track adjacent said course on one side, a conveyor car mechanically operated upon said track, a horizontally extending arm *hinged to said car* extending midway of said course, *a wheel rotatably mounted near the end of said arm, and resting upon the ground*, a platform supported by said arm and a lure or quarry mounted upon said platform for attracting the dogs."

The history of the application for this Smith patent (No. 1,379,224) is found at R. 153-192c. At R. 160 and

161 are set forth eight claims—the claims presented with Smith's application as originally filed. The claims, on those pages, which are crossed with a red mark (original Claims 1, 2, 3, 7 and 8) were all broader claims than any of the other original claims there set forth, or any of the four claims found in the patent as granted (see R. 192b and 192c), in that they failed to contain the same *number* of elements and *all* the conditions and requirements specified in original Claims 4, 5 and 6 (see R. 160 and 161), which claims were renumbered and ultimately became Claims 2, 3 and 4 of the patent (see R. 192b and 192c). Nor did said *original, registered and abandoned claims*, 1, 2, 3, 7 and 8, contain the same *number* of elements and *all* the conditions and requirements specified in Claim 1 of the patent as granted (see R. 192c). Claim 1 of the patent, with *all* the elements, conditions and requirements specified therein, was first presented with an amendment dated Nov. 9, 1920, found at R. 169, together with two broad claims, crossed with red ink on that page; it was originally marked "3", but after the broad claims found in that amendment at R. 169 had been rejected by the Patent Office Examiner, cancelled and abandoned, without appeal from the action rejecting them (as was also the fate of original, broad Claims 1, 2, 3, 7 and 8, found at R. 160 and 161), that claim was renumbered and became Claim 1 of the patent as granted (see R. 192b).

These four, narrow, restricted claims of the patent as granted—restricted and limited in terms, so as to cover the structure and principle of operation thereof as the same is illustrated by the drawings and described in the specification—consisting of *original* Claims 4, 5 and 6 (R. 160 and 161) and Claim 3 of the amendment of Nov 9, 1920 (R. 169), were not rejected or found fault with by the Patent Office, clearly because, in their number of elements, arrangement, location and condition of parts, *they were in*

harmony with the only machine illustrated in the drawings and described in the specification and with the principle of operation of that machine.

Moreover, as it is the province of the patentee "*to make his own claim and his privilege to restrict it*", as this Court holds in Fay v. Cordesman, 109 U. S., at page 421, reaffirmed in Hubbell v. United States, 179 U. S., at page 82; and, as the language of the claims here is clear and distinct, there can be no doubt that in and by the claims in issue here (Claims 1 and 2 of the patent), in pursuance of the letter and spirit of Sec. 4888 R. S. U. S., Smith did "*particularly point out and distinctly claim the*" • • • "*combination which he claims as his invention*"; and that if, in point of fact, he had actually invented more than what he *claimed* by his patent—if he has only *claimed* a part of what he invented—"*he is presumed to have abandoned the residue to the public*", to use the very words of this Court in McClain v. Ortmayer, 141 U. S., at page 424.

Nor is it profitable to inquire as to whether or not the Patent Office Examiner was right or wrong in rejecting the broad claims made by Smith (see R. 160; 161; and 169), which were afterwards cancelled and abandoned by Smith. Smith is bound by his action. If dissatisfied with the action of the Examiner in rejecting all but the narrow claims found in his patent, Smith should have pursued his remedy by appeal (see this Court in Shepard v. Carrigan, 116 U. S., 593, and Hubbell v. United States, 179 U. S., at page 83).

All the limitations, as to number of elements, location, construction and relation of parts, found in the claims of this Smith patent are, as we have seen and as the history of the patent shows, self-imposed limitations, imposed by the applicant himself and binding on the patentee. In the case of such limitation in the claim, especially when they are voluntarily made by the patentee, the patentee is

bound thereby. *"When a claim is so explicit, the Courts cannot alter or enlarge it"*, as this Court holds in Keystone Bridge Co. v. Phoenix Iron Co., 95 U. S., at page 278, which doctrine this Court has repeatedly reaffirmed, by express reference to the last-named case, as in Motion Picture Co. v. Universal Film Co., 243 U. S., at page 510, and in Minerals Separation v. Butte Mining Co., 250 U. S., at page 347.

The defendants' car, lure-carrying arm and housing (all located at the *inner* side of the race course) are shown in the photographs found at R. 140 and 141. It is true, as stated at page 4 of petitioner's brief, that it appears from the evidence that the above named devices of defendants, in their construction and principle of operation, are made in accordance with the dog racing amusement illustrated and described in the Creveling U. S. patent No. 1,481,313, found at R. 147. That fact, however, the Creveling patent being subsequent in date to said Smith patent, is of no consequence here, except this: that it is convenient to refer to the drawings and specification of the Creveling patent to better understand therefrom the particulars of construction of defendants' device and how defendants' device differs, *both in construction and principle of operation*, from the device of said Smith patent and from the structure *claimed* by Claims 1 and 2 (the claims in issue here) of said Smith patent.

Nor is it of any consequence, as the District Court in the Fifth Circuit seemed to think it was (see 21 Fed., 2nd., at page 369), that, when Creveling originally applied for his patent, he made claims that were too broad in scope, with the result that the Patent Office Examiner cited against such broad and subsequently cancelled claims things *disclosed* in this earlier patent to Smith. The Patent Office Examiner, in so rejecting Creveling's original broad claims,

did not and could not decide that the machine *disclosed* in Creveling's drawings and description *infringed* the Smith patent; for such is not the province of the Patent Office Examiner. All the Examiner could and did do was to point out, by reference to the prior art as disclosed by the Smith patent and other patents cited by him, that Creveling was then claiming too broadly (as Smith also had done, when applying for said Smith patent); but, when Creveling confined his claims to his particular construction of device (as Smith had previously been forced to do, too), then the Creveling patent was allowed and granted.

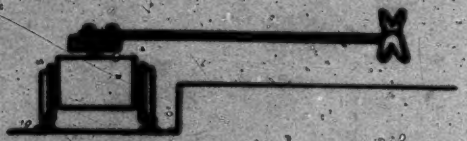
Turning then to the defendants' device, as illustrated in the photograph at R. 140 and 141, and even more clearly in the drawings of said Creveling patent, at R. 147 and 148, we find it to be one in which: (a) the car, its rails or tracks and the casing or housing are all located at the inner side of the race track (see Figs. 1 and 2 of Creveling patent at R. 147, and specification of Creveling patent, at R. 150); (b) that the lure-carrying arm is not provided, at its outer end, or anywhere, *with a wheel to support that arm at its outer end, or for any purpose;* (c) that the said arm is *not hinged* in any way to the car, or to any part thereof, so as to permit the arm to have some play and to be capable of some up and down or vertical movement independently of the movement of the car itself.

The defendants' device, in all the respects just tabulated above, differs, *in construction and principle of operation,* from the device illustrated, described and claimed in said Smith patent No. 1,379,224.

To illustrate, graphically, difference in construction and principle of operation between the device of defendants and that of this Smith patent, we illustrate in the drawing on the opposite page, in a diagrammatic way, on one side of the drawing the car of the Smith patent with its *hinged*

DEFENDANT'S CAR

CATED ON INNER SIDE OF RACE TRACK.

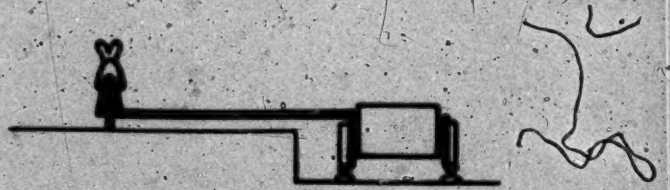


DEFENDANT'S CAR
ON STRAIGHTAWAY

DEFENDANT'S CAR
ON CURVE

SMITH CAR

LOCATED ON OUTER SIDE OF RACE TRACK.



SMITH CAR
ON STRAIGHTAWAY.

SMITH CAR
ON CURVE

lure-carrying arm attached at its inner end to the car and provided with a wheel at its outer end, in one instance on the straight-away of the race course and in the other instance on the curve. On the opposite side of the same drawing is depicted the defendants' car with the inner end of the arm *rigidly* fastened to a disk on the body of the car, carrying the lure at its outer end *but without any wheel*. The defendants' car, rails, etc. are located on the *inner* side of the race course. The defendants' car, rails etc. are also shown in the position which all these various parts take on the straightaway and also on the curves, in contrast with the device of the Smith patent in which the car, rails, etc. are all located on the *outer* side of the race course.

Instead of being *hinged* to the car (as is true of the device of said Smith patent), the lure-carrying arm of defendants' device is *rigidly* fastened at its inner end—by means of bolts—(see photograph at R. 141 and Fig. 5 of Creveling patent at R. 148) to a disk 30 on the chassis of the car, as admitted by petitioner's expert, Keene (see R. 71; 73; 75 and foot of R. 76 and R. 77). The particular construction of defendants' device in this respect and how it operates are thus stated in the specification of the Creveling patent, at R. 151:

> "As shown in Fig. 5, a stationary disc 28 is fixedly secured upon a yoke 29 rising from the chassis 17 and suitably secured thereto. Arranged in superimposed relation with respect to the disc 28 is a movable disc 30 mounted for rotational movement by means of a bolt 31 extending axially through both of said discs. The disc 30 forms a support for the arm A with the latter bolted thereto in the manner shown in Fig. 5 and extending radially therefrom with the lure L mounted on the outer end of the latter. The arm A and consequently the disc 30 is normally urged to a

retracted position with respect to the race track R and the slot 16 so that the lure is disposed within the housing H. This is effected through the medium of a coiled contractile spring 32 secured at one end to the arm A and at its opposite end to the chassis 17, all in the manner clearly shown in Fig. 3.

To maintain the arm A in projected position wherein the lure L is disposed directly above the track R, a latch 33 pivoted at the point 34 is adapted to engage within recesses 35 formed in the discs 28 and 30 so as to lock the disc 30 against rotation upon the disc 28. This latch 33 is normally urged to latching position through the action of gravity, but is adapted to be moved to releasing position by means of a trip 36 located between the track rails 15 and in the path of movement of the latch 33. The trip 36 is capable of tripping and non-tripping positions, and to this end it is mounted on a shaft 37 journaled in bearings 38 and provided with an operating crank 39 which can be extended to any suitable point for operation as will be understood from the consideration of Fig. 2."

In speaking of some of the differences in construction between the device of this Smith patent and defendants' device, petitioner's witness, Keene, who testifies to having built devices for the petitioner and Smith, points out, at the foot of R. 78, that, in the case of these dog racing devices, the car, which carries the arm and lure, travels at the rate of about forty miles an hour; that there is a disadvantage in having the arm *rigidly* connected to the car (as in defendants' device) over having it connected to the car as in the manner set forth in said Smith patent; and that, in the Smith device, the arm is supported by a movable support (a wheel) at its outer end. He there says: "I think that in the rigid arm, the vibration of the car will, in time, crystallize the arm and cause it to break off"

(R. 70, near foot of page). And on recross-examination, at R. 79, Keene states:

> "I say that it is my opinion that if the arm is rigid and not supported at its outer end by a wheel, that it would crystallize and break off by the vibration. As a matter of fact, I know it happened, because Mr. Smith tried the rigid arm and discontinued the use of it. I believe he found the rigid arm objectionable and that is why he put the wheel at the end, because the rigid arm was not satisfactory."

DEFENSES RELIED UPON BY RESPONDENTS AS TO SMITH PATENT NO. 1,379,224.

The defenses relied upon by respondents in the Courts below in the case at bar with respect to this Smith patent, as is also true with respect to the two other Smith patents finally relied upon by the petitioner at the trial of this case (the same defenses relied upon by respondents here) are:

(1) That, when the claims in issue of said Smith letters patent are construed in the light of the terms of said claims and in the light of the thing illustrated and described in (disclosed by) the drawings and specification of the letters patent, respondents' device does not infringe.

(2) If said claims, or any of them, be construed so broadly as to include within their scope the respondents' device, then the letters patent, as to any such claim or claims, are void for lack of patentable novelty and invention.

As stated above and to save repetition when we consider later herein the other Smith patents in suit (the *starting cage* patent No. 1,507,439, found at R. 222, and the *housing* patent, No. 1,507,440, found at R. 254), the same defenses

were made below and are urged by us here as to each of said patents. But, as to the said *starting cage* patent (R. 222), we also urged below, as we urge here, the additional defense that that patent is also void because the thing claimed by the single claim of that patent is merely a conglomeration—*a mere aggregation*—of elements, as distinguished from a true, patentable *combination* of co-operating elements.

THE PRIOR ART RELATIVE TO SMITH PATENT NO. 1,379,224—THE PATENT FOUND AT R. 186.

Before referring specifically to the patents of the prior art relative to this particular Smith patent, we wish to point out two things to the Court:

(1) That not one of the petitioner's assignments of error in the Court below (see R. 103-105) assigns as alleged error any ruling of the trial Court in the sustaining of objections made by defendants' counsel to questions put to witnesses or to proofs which petitioner's counsel sought to introduce in evidence. Clearly the trial Court was right in its rulings as to such matters; but, whether right or wrong, as this petitioner did not assign as error, on its appeal to the C. C. A. for the Sixth Circuit in this case, any such ruling by the District Court, no question can be raised by her counsel here as to the action of the trial Court in its rulings as to any such matters. Instances of such rulings by the trial Court are found at R. 70 and at R. 73 and 74.

(2) That there is no clear and definite proof that the particular alleged inventions, *the subject-matter of the particular claims in issue* (for the thing *patented* is the thing *claimed*) of all, or of any, of the *three* Smith patents

finally relied upon by the plaintiff went into any—much less any *extensive*—use. For it must be recalled, as the bill, answer and record referred to herein *supra* show, the bill, as filed, charged infringement of no less than eight Smith patents; that each and all of said eight Smith patents were alleged to be for *new* and *useful* inventions; that plaintiff and Smith had put the alleged inventions of each and all of said eight Smith patents into extensive use etc.; and that defendant had infringed each of said eight patents. The answer not only positively denies each and all of said allegations, as to each of said eight patents, and puts plaintiff to strict proof thereof (see for example clause "11" of answer, at R. 30), but positively denies infringement of each and all of said patents, and then pleads special defenses, as to invalidity etc., as to each of said patents.

Extensive use of the *very thing patented* (*claimed*) by a patent is no proof, *per se*, that the thing patented is an *invention;* it is, at most, only proof tending to show that the thing patented is *useful.* But, even to have the latter effect, the proof must be clear that the thing which the plaintiff has put to extensive use *is the very thing patented* (*i. e., claimed*) *by the plaintiff's patent.*

Commercial success, to be of any value in resolving doubt as to the patentable novelty of the thing claimed by a patent, must show that *the very thing of the patent* is the thing that went into extensive use and proved a commercial success. See Johnson v. Lambert (C. C. A. Second Circuit), 234 Fed., at page 889; and Haggerty v. Rawlings Mfg. Co. (C. C. A. Eighth Circuit), 14 Fed. (2nd), at page 930, citing Duer v. Corbin Cabinet Lock Co., 149 U. S. 216. Indeed, this must be true since the thing *patented* is the thing *claimed* (Leeds & Catlin v. Victor Co., 213 U. S. 301).

It is only necessary to examine the testimony of petitioner's witness, Keene, at R. 70, to note the objection of defendants' counsel then and there made and sustained (which action of the trial Court in sustaining that objection, or any other objection, is not assigned as error), and to the subsequent testimony of Keene, to see that, as to the *"35 or 38 tracks"* which Keene there refers to at the foot of R. 70, there is no *clear and definite* proof that those *"tracks"* embodied in their construction the particular device the subject of either Claim 1 or Claim 2 of this Smith patent No. 1,379,224 (the only alleged invention the subject of that patent which is in issue and of importance here). Keene's statements, at the foot of R. 70, must be taken in the light of Q. 16 on that page, which asks him to state *"approximately how many dog racing tracks are in existence in this country, not only operating under Smith's license, but anyone—all dog racing tracks."* The *inference* might be that some of those *"35 or 38 tracks"* there referred to by Keene might have embodied that particular construction; but neither *inference* nor *conjecture* is *evidence* of a fact put in issue by the pleadings. Nor does such very general testimony, in an attempt to prove that *the patented thing* went into extensive use, come up to the exacting requirements of the law laid down by the Courts in the cases last cited *supra.*

As to the other two Smith patents remaining in the suit (the *housing* and *starting cage* patents), there is not an iota of *competent and definite* proof in the record that both, or either, of them, as those alleged inventions are *disclosed* (*described* and *claimed*) in said patents, went into use at all. The only testimony in the record which, by any stretch of the imagination, can be said to relate to the use by Smith or petitioner of the devices of the Smith *starting cage* patent (No. 1,507,439) or to the use by Smith

or petitioner of the Smith *housing* patent (No. 1,507,440) is that of Keene, at the foot of R. 69, where, in answer to Q. 8, Keene says:

> "*The first two tracks that I worked on was under that old 1912 patent*" (the Smith patent No. 1,038,504, granted Sept. 10, 1912, found at R. 276—one of the eight Smith patents declared upon in the bill but which plaintiff did not rely upon at the trial—which we consider *infra* herein) "*but I built five under this 1921 patent*" (the Smith patent, No. 1,379,224, found at R. 186), "*including that starting cage and the housing. The places where I built these dog race tracks under the Smith specifications under the old 1912 patent*" (said patent found at R. 276) "*were first—one at the Madison Kennel Club, Fairmont City, Madison County, Illinois. The next one was the Hawthorn*" * * *.

This does not *clearly prove* that the particular constructions—the devices *as claimed*—in the three Smith patents in issue here went into use at all—much less that any of said devices, as *patented* (i. e., *as claimed*), by any *claims in issue* of any of said three Smith patents went into *extensive use.*

We shall now consider the patents of the prior art which have bearing on the dog racing amusement claimed by Claims 1 and 2 of Smith patent No. 1,379,224, dated March 24, 1921, applied for Sept. 4, 1919, found at R. 186.

As these prior art patents are readily understood by reading the specifications in the light of the drawings, "*no extrinsic evidence was given or needed to explain them*", to use the very words of this Court in Market Street R. Co. v. Rowley, 155 U. S., at page 625.

SMITH PATENT OF 1912, NO. 1,038,504.

The first patent of the prior art which we shall consider is this patent, No. 1,038,504, granted to this same Owen P. Smith on Sept. 10, 1912 (found at R. 276), granted and issued seven years before this same Owen P. Smith applied for his patent No. 1,379,224 (found at R. 186). This Smith patent of the year 1912 is one of the eight Smith patents declared upon in the *"duly verified bill"* (see R. 13, although, probably to shorten the record, the verification—the oath—to the bill has been omitted); nevertheless, as we have seen, before the trial, plaintiff, by her counsel, declared that she would *"not rely"* upon that patent or upon four other Smith patents pleaded in her bill (R. 60). Of that Smith patent the said plaintiff charged, under oath, in the bill (R. 2) that it is for a *"new and useful improvement in lure conveyors"* and (at R. 8, Clause 11 of the bill, and R. 9, Clause 13 of the bill) that Owen P. Smith and plaintiff *"up to the present time"* (the bill was filed Aug. 19, 1927, see R. 1) *"have made, used and sold the invention or inventions covered by the aforesaid several letters patent"* (this very Smith patent of the year 1912 and all the other seven Smith patents declared upon in the bill). This is also the same Smith patent to which plaintiff's witness, Keene, refers at R. 69, but which he tried to say was for an *"impractical"* device (see R. 73, foot), when we objected, on the ground that plaintiff was estopped to take such an inconsistent position on the record, and the trial Court sustained our objection (R. 74, top), which action of the trial Court was not only correct but plaintiff and her counsel conceded it to be correct—at least no exception to that ruling was taken at the time, nor was that ruling of the trial Court assigned as error on plaintiff's appeal. Clearly the trial

Court was right in sustaining our said objection, because plaintiff, in the circumstances, was estopped from taking an inconsistent position with respect to that Smith patent (Railroad Co. v. Mellon, 96 U. S. 528; Bigelow on Estoppel, 5th Edition, 673 and 717).

As the drawings and specification of this 1912 Smith patent (R. 276) disclose, the *"lure conveyor"* (the invention) of that patent is one in which there are present the following things, also found in the Smith patent No. 1,379,224 (R. 186): a casing or housing with a continuous opening or slot therein, through which continuous opening or slot a lure-carrying arm projects, at the outer end of which arm the lure is attached, the inner end of the arm being connected to the car; a motor car, which carries the aforesaid arm, being enclosed in the housing or casing, so that the car will be concealed from view and protected by the casing or housing; the said car traveling on rails, which rails are also located within the casing or housing.

The device of this Smith patent of 1912 (R. 276) differs from that of the Smith 1921 patent (R. 187) in that the housing, except at its extreme upper end, is completely located under ground and not partially located under ground as illustrated in Fig. 2 of said Smith patent of 1921 (R. 187), and that the said housing enclosing the car, tracks etc. is located in the race course itself, and not on the *outer* side thereof; and also in the fact that the continuous slot or opening in the housing through which the lure-carrying arm projects is at the top of the housing and not at one side thereof; and also in the fact that as the arm projects through the continuous slot in a vertical direction and not in a horizontal direction, it is not provided with a wheel at its outer end to support the outer end of the lure-carrying arm, as illustrated, described and claimed in the said Smith patent of 1921 (R. 187).

WALSH PATENT OF 1898, NO. 611,876.

This Walsh patent, dated Oct. 4, 1898, found at R. 264, *"for race track for dogs"* states, in the specification, that the race course is formed of *"one or more tracks"* and the specification expressly states (R. 266): *"but it is evident that a race course may be built with but one track"*. The drawing illustrates two tracks, described as arranged concentric to each other and enclosed by suitable fences. Outside the race course, concealed from view of the dogs by the fence, the tracks for the motor car and the motor car are placed. From the motor car D extends the lure-carrying arm or pole (where there are two race courses, as shown in the drawing there are two lure-carrying arms or poles). The lure-carrying arm or pole, whether there be one, or two as shown in the drawing, is described as extending in a *transverse direction* over the fence. This arm or pole, whether there be one, in the case of a single race track, or two as illustrated in the drawing, extends over the fence and part way across the race course *in a horizontal direction* (see parts marked E E′ in the drawing). As illustrated and described, the lure, in the form of a dummy hare, is not *directly* or *immediately* attached to the outer end of the horizontally extended arm. As shown in the drawings and described in the specification (see R. 265-266) a rope, rod or a pole is attached to the outer end of the said horizontal arm (see F in the drawing), and at the lower end of said rope, rod or pole is attached a support G, this support G being made of rubber, canvas or other suitable material, so as to readily conform to the undulations of the ground of the track. On this support G is secured the dummy hare H (the lure). In regard to this described and illustrated means of connecting the lure with the horizontal arm which, at its inner end is attached

to and projects from the motor car, the specification states, in the third paragraph at R. 266, *after stating that the race course may be built with one track*, as follows:

> "and it is also evident that other suitable mechanical means may be employed for pulling the support G rapidly along in the track for the animals to follow with the hare or dummy in plain view of the animals."

In other words, as the specification of this patent is addressed to those skilled in the art to which it relates, and therefore to persons of reasonable intelligence, the patentee leaves the matter of connecting the lure to the outer end of the horizontally projecting arm largely to the judgment or discretion of intelligent mechanics skilled in the art to which this particular patent relates. The patent contains five claims, found at R. 266 and 267, and while Claims 3, 4 and 5 bring into the combination the support for the dummy "*to be dragged*" along or in the track, Claims 1 and 2 contain no such limitation and cover the combination broadly, however the lure or dummy may be attached to or connected with the end of the projecting horizontally disposed arm, which arm is attached to and supported at its inner end to the motor car.

These things, in the light of what we have already said of this Walsh patent and in view of the fact that the Walsh patent, like all patents, is addressed to those skilled in the art to which it relates, would seem to clearly indicate that, at least as to two of the five claims of this Walsh patent, *Walsh did not intend to limit himself to any particular way of carrying the lure at the outer end of the projecting arm.* On any careful study of this Walsh patent of 1898 any one, at that time, while keeping within the scope of Claims 1 and 2 of that Walsh patent, in the light

of the disclosures of the patent, might readily have bent that horizontally projecting arm, at its lower end towards the bed of the race course, and attached the lure or dummy rabbit directly to the end of said arm.

The only other prior patents which we care to consider in connection with our discussion of Smith patent No. 1,379,224 are the Everett U. S. patent of the year 1913 and the British patent to Moss in 1896, which patents we shall now consider in the order just given.

EVERETT PATENT NO. 1,052,807 OF FEB. 11, 1913.

This Everett patent is found at R. 271. It illustrates and describes a race track and device to be used for racing dogs in pursuit of a dummy rabbit. It illustrates and describes an elliptical race course in which the operative mechanism is enclosed in a housing or casing having a continuous slot or opening therein at its top, through which opening a vertically arranged lure-carrying arm projects, the lure or dummy rabbit being attached to the outer or upper end of this arm. In this instance, as is also true with respect to the Smith patent of 1912 heretofore considered, the housing or casing with its continuous slot or opening therein, through which the lure-carrying arm passes, is located in the race course itself and about the center of the race course instead of being at the *outer* side thereof, as in the case of Smith patent 1,379,224.

MOSS BRITISH PATENT NO. 9,508 OF 1896.

This Moss British patent, with the specification and drawings thereof, is found in the record at R. 268-269, the drawing thereof being found at R. 269. In this Moss patent, as is also true of the Walsh patent heretofore discussed and found at R. 264, the electrically operated mechanism which carries the lure is controlled in its opera-

tion from the Judge's stand, as is the case with this Smith patent No. 1,379,224. The form of the track as illustrated in the drawing is elliptical, as in the said Smith patent at R. 186 and in the said Moss patent at R. 269. In the case of this Moss patent the drawing, at R. 269, shows, in Fig. 1, a plan diagrammatic view of the race track, and in Fig. 2 a detailed transverse section taken on the line x x of Fig. 1, taken through the body of the dummy animal propelled along the track or race course. The numeral 15 in Fig. 2 illustrates, in crossection, the body of the artificial lure or "dummy rabbit" carried by the adjacent mechanism illustrated in Fig. 2, and the latter mechanism, including the trolley wire 22, is protected and the dogs protected from coming in contact with the live trolley wire 22 by the hood 28 shown in cross-section in Fig. 2, in which hood, at the top thereof, is a continuous opening, to allow for the travel of the vertical member 29, all of which are illustrated in Fig. 2. The description of the construction and operation of these parts is set forth in the specification of this Moss patent at R. 268-a and 268-b as follows, reference being here made to the drawing at R. 269:

> "The track or rail on which the artificial rabbit 15 is impelled, is preferably in the form of a rail 16 disposed approximately medially between the walls 3 and 4, but also adapted to take a sinuous or wave course as seen in the diagrammatic view in Fig. 1, so that the dummy may imitate as closely as possible the course of the natural animal. The electric motor 17 forms part of or is carried by the dummy animal or rabbit, the shaft 18 of the motor carrying a terminal pinion 19 meshing with a gear-wheel 20 secured to or forming part of the travelling and supporting wheel 21 which has a peripheral grove embracing the rail. The current is led from the motor to the wheel 21 through the wire 31 when it is grounded through the

rail 16, the current first entering the motor through the trolley wire 22, trolley wheel 23, and connecting wire 24, the trolley wire receiving its current from the shunt wire 25 leading from any suitable central station. The grand stand is provided with a switch mechanism 26 by the turning of the lever 27 of which to different degrees or notches, the intensity of the current propelling the rabbit can be varied, thus varying the speed of the rabbit. The race is made the more interesting in that the speed of the dummy rabbit can be increased to such a degree that the dogs will never overtake the dummy; and to avoid any danger of the dogs coming in contact with or overtaking the dummy, they are cut off by the swinging gate at the proper moment and made to enter the kennel located in the center field.

To avoid any danger of the dogs coming in contact with the live trolley wire, I cover the full length of the wire with a hood 28 of wood or other nonconducting material, the same being provided with suitable openings to allow for the fastening to the wire of the lower ends of the vertical members 29 depending from the guy rods 30 stretched at intervals between the walls 3 and 4 of the race course."

The prior art, relevant to the thing *patented* (*claimed*) by Claims 1 and 2 of Smith patent No. 1,379,224, as disclosed by the prior patents above considered, shows: that it is not correct to say, as stated at page 11 of petitioner's brief, that "*he*" (Smith) "*produced function*" (sic) "*never performed before, terminating in a new and useful result never achieved before—a successful complete dog race in pursuit of an inanimate lure*". Moreover, if that statement were true in point of fact, it would not be material here, since a patent is not valid for a mere *function* or *result*, but merely for *the particular means* claimed in the patent by which a certain *function* or *result* is accom-

plished (Corning v. Burden, 15 How. 252; Westinghouse v. Boyden, 170 U. S., 537, and Minerals Sep. Co. v. Butte Mining Co., 250 U. S., at page 349).

Nor is it established, on this record, *by competent, clear proof*, that the thing patented by Smith, by Claims 1 and 2 of his said patent of May 24, 1921 (for the thing patented by those two claims of that patent is the alleged invention of that patent which is in issue here) resulted in the first *"successful dog race in pursuit of an inanimate lure"*.

The mere fact that Petitioner's witness, Keene, *"had never heard of, or seen, a dog race prior to 1921, and this dog racing patent"* (see R. 74) is of little consequence and does not *prove* the said assertion in petitioner's brief. Nor is such a fact, if it were a fact, proved by the dog fancier, Morley, who resides at St. Louis, has been to New York, Illinois, Massachusetts and Rhode Island, whose testimony is found at R. 83; nor by what Strout, a waiter and breeder of canaries, says at R. 84; nor by Spencer, whose testimony is found at R. 84 and 85. And yet, in the testimony of the said witnesses are to be found *the only statements in the record* which, only by a stretch of the imagination, can be construed as tending to support the said assertion in petitioner's brief.

The patents prior in date to said Smith patent No. 1,379,224 of May 24, 1921, which prior patents we have referred to *supra*, are relied upon by us, as they were also pleaded in the answer, at R. 38 and 39, "for the purpose of assisting the Court in interpreting the claims of said Smith patent and also for the purpose of showing want of patentable novelty and invention in the thing claimed by any claim of this Smith patent relied upon by plaintiff in this case"; and also as prior patents, or prior publications, within the meaning of Sections 4886 and 4920 R. S. U. S.

In such circumstances and under said statutes, it is not

necessary to show that any one particular patent illustrates or describes the exact combination claimed by the claims in issue of the patent in suit; it is all sufficient that, in the light of what is disclosed by the various prior patents put in evidence by defendant, the thing which plaintiff's patent *claims* (or, in this case, the thing which plaintiff contends her patent covers) *did not rise to the dignity of patentable invention* (see this Court, in Concrete Appliance Co. v. Gomery, 269 U. S., at pages 179-180, and 184-185, and in Duer v. Corbin Cabinet Lock Co., 149 U. S., at page 222).

If, as is urged in petitioner's brief, page 7 thereof, Claims 1 and 2 (the only claims of that Smith patent in issue here) be construed so as to cover "*all other forms which embody the substance of a lure-carrying arm horizontally extending from the conveyor through a continuous longitudinal opening of the casing located on either side of the race course*", then, in view of what is disclosed to those skilled in the art by the prior patents considered *supra*, we contend that said Smith patent, as to the said claims thereof in issue here, is void *for lack of patentable novelty and invention.*

Nor is it true in respect to any of the prior art patents heretofore considered in this brief in connection with said Smith patent 1,379,224, or with respect to prior art patents hereinafter considered in respect to the two other Smith patents in issue here, that, as is in effect stated in petitioner's brief at page 13 thereof, the burden was on these respondents to prove that the devices disclosed by all, or by any, of the prior patents in evidence were actually put into successful use.

Such a contention not only utterly ignores the provisions of Secs. 4886 and 4920 R. S. U. S., but is in direct contravention of what this Court has expressly decided; it puts a burden on the defendant in a patent case which, under the

law, he is not required to carry. As has already been noted and as reference to defendants' answer in this case will show, as to this particular Smith patent, as well as to each and all of the Smith patents in suit, defendants pleaded the prior patents not only as *patents* but as *prior publications*, to show lack of patentable novelty and invention in the things claimed by the claims in issue of the Smith patents in suit. As to the devices illustrated and described in any such prior patents the defendants did not plead *prior use* of such devices, because under Sec. 4920 R. S. U. S. "*prior use*" is a distinct and separate defense from that of pleading prior *patents* or prior *publications*. But this matter has been settled, against the extraordinary contention found in petitioner's brief, by this Court in several cases.

In Pickering v. McCulloch, 104 U. S., at page 319, defendant had introduced in evidence certain prior patents for the same purpose as the prior patents introduced in evidence in this case were put in—*to show lack of patentable novelty and invention in the thing claimed by plaintiff's patent.* In that case, in answering the precise contention above referred to and made by the counsel for the plaintiff, this Court says, a part of the following quotation being purposely italicized by us, at p. 319 of 104 U. S.:

> "It is objected, however, that the machines described in these patents *are mere paper machines, not capable of successful practical working.* But on examination it sufficiently appears, we think, that the objections can be sustained only as to minor matters of detail in construction, not affecting the substance of the invention claimed, and could be removed by mere mechanical skill, without the exercise of the faculty of invention. *In this view, the Wise and Smith*

patents are not rendered inefficient as defences in this suit, by reason of the alleged imperfections of the machines described in them.''

See also Duer v. Corbin Cabinet Lock Co., 194 U. S. at pages 219 and 223.

In view of the above finding of this Court, just quoted from its opinion in Pickering v. McCulloch, and in view of what is disclosed, to those skilled in the art, by the prior patents hereinbefore considered, and in view of the broad terms of Claims 1 and 2 of the Walsh patent (see R. 266 and 267), it would, for instance, not have required the genius of an inventor but merely mechanical skill and adaptation to have bent the arm "E" described in that patent and illustrated in the drawing, at R. 264, and to have attached the lure directly to the outer end of that arm, as we have indicated *supra*. And, so far as a casing or housing with a continuous opening is concerned, through which continuous opening in the housing or casing the lure-carrying arm passes, that is fully disclosed, among other prior patents, by the prior patent to Smith himself of Sept. 10, 1912, at R. 276; and when there was question of placing the casing or housing and the motor car in its tracks on the outer side of the race course, as illustrated, described and claimed in the Smith patent in suit, No. 1,379,224 (R. 186), in view of the then condition of the prior art, it hardly required the genius of the inventor to recognize that, in such circumstances and under such conditions, when it was desired to place the lure-carrying arm in a horizontal position, it would be necessary to put the continuous opening in the casing or housing at the side instead of at the top of the housing, as shown in the Smith patent of 1912, at R. 276.

If Claims 1 and 2 of Smith patent No. 1,379,224 be given

the construction urged at page 7 of petitioner's brief, then and in that event the said patent, as to those claims, *is void for want of patentable novelty and invention.*

AS TO INFRINGEMENT OF CLAIMS 1 AND 2 OF SMITH PATENT NO. 1,379,224.

As already pointed out and as admitted in petitioner's brief at page 4, respondents' apparatus is constructed in accordance with the device as illustrated and described in the Creveling patent, found at R. 147. Defendants' device is also illustrated in the photographs at R 140 and 141. Defendants' device is not the device claimed by Claim 1 of this Smith patent, for two reasons:

(1) In defendants' device there is not present a housing or casing "extending around the *outer* side of the race course".

(2) In defendants' device there is not present "*a wheel rotatably mounted on and supporting the arm at the projecting end thereof.*"

As to Claim 2, defendants' device does not infringe that claim, because: in defendants' device the arm is not *hinged* to the car; and also because there is not present in defendants' device "*a wheel rotatably mounted near the end of said arm and resting upon the ground.*"

It should be noted that Claims 1 and 2 of this Smith patent No. 1,379,224, as is also true of the claims of the two other Smith patents in suit, No. 1,507,439 (the starting cage patent) and No. 1,507,440 (the housing patent), are claims for a combination of elements going to make up a supposedly complete machine. It so happens that the law with respect to the interpretation of claims for a combination of elements is correctly stated, as to each one of

the following propositions, in Walker on Patents, 6th Ed., Vol. 1, Sec. 411, at pages 498 and 499, the author, in stating the propositions contained in the following quotation, citing in his notes, as to each proposition, leading decisions of this Court, most of which we have referred to herein, either *supra* or *infra*:

> "Sec. 411. Omission of one element or ingredient of a combination covered by any claim of a patent, averts any charge of infringement based on that claim, whether or not the omitted ingredient was essential to the combination of the patent, and whether or not it was necessary to the operativeness of the device. And it makes no difference that another element is made to do the work of itself and of the omitted element. A combination is an entirety. If one of its elements is omitted, the thing claimed disappears. Every part of the combination claimed is conclusively presumed to be material to the combination, and no evidence to the contrary is admissible in any case of alleged infringement. The patentee makes all the parts of a combination material when he claims them in combination and not separately."

As the foregoing propositions set forth in Walker on Patents, 6th Ed., Sec. 411, would seem to meet and completely answer the sophistical arguments found in the brief of the petitioner in support of the proposition that respondent's device, notwithstanding its construction and notwithstanding the clear terms of Claims 1 and 2 of this Smith patent, nevertheless does infringe each and both of said claims, and because every proposition, as stated by the author in the quotation above given, is sustained by the decisions of this Court which he cites in his notes at the foot of that section, we respectfully submit that the above quotation from Walker on Patents, applied to the

facts as they exist in this case, amounts almost to a demonstration that the Courts below were right in the case at bar in holding that respondents had not infringed these Smith letters patent, because, in so doing, the Courts below, in the case at bar, followed the rules governing the interpretation of claims of letters patent for a combination of elements, as those rules have been repeatedly declared by this Court and in the very cases cited in the footnotes to Sec. 411 of the Sixth Edition of Walker on Patents.

SMITH PATENT NO. 1,507,439, DATED SEPT. 2, 1924, APPLIED FOR MAY 16, 1921, FOR STARTING CAGE FOR RACING DOGS.

The drawings and specification of this patent are found at R. 222-224a, and the history of the application for this patent is found at R. 193-209. This patent contains a single claim, limited to a mere conglomeration or aggregation of specially arranged or constructed features or elements. Such as it is, it took Smith and his attorneys more than three years to persuade the Patent Office Examiner to allow a patent for the so-called invention illustrated and described in that patent. The single claim of that patent, found at R. 224 and 224-a, is here set forth, although in quoting the claim we have purposely italicized certain portions thereof:

> "In a starting cage for racing dogs, a frame comprising a box-like structure divided into a plurality of compartments and *comprising walls formed of wire mesh partially covered with fabric,* individual rear doors for each of the compartments and a single front door hinged at its upper end to the top walls of the frame, *divergent inclined* members secured to the top of the said frame and extending upwardly and out-

wardly beyond the face of the front door and *having their outer ends in the plane of the side walls of the box-like structure,* springs secured to the outer ends of said inclined members and to the door and lying in the plane of the hinges, and a latch at the bottom of the cage for coaction with the lower edge of the front door to hold the front door normally closed against the tension of said springs, said springs adapted to raise the front door upon release of the latch."

The defendants' starting cage, a rear view of which is shown in the photograph at R. 143 and front views of which (one with the door open and the other with the door closed) are shown in the photographs at R. 144 and 145. By reference to said photographs at R. 143, 144 and 145 it will at once be noticed, when comparing the thing shown in those photographs with the thing claimed in the said claim of this Smith patent, that the elements, features and conditions specified in those parts of the said claim which we have italicized are not present in the defendants' starting cage. In the defendants' starting cage the dog stalls are divided one from another, as hog, horse or cow stalls have been divided from time immemorial, i. e., by boards placed on edge one above another, so as to make closed partitions between each animal. At the rear of each stall there is a door which is opened or closed by lifting it up by hand or pushing it down by hand, as illustrated at R. 143. The front of defendants' starting cage, shown with the long front door open at R. 144 and with the same front door closed at R. 145, is hinged at the top and provided with a latch at the front, as was common and well known from time immemorial, when there was question of providing a door for a box or house for any animal and it was desired to allow the door to be hung from the top instead of the side.

It will also be noted, by comparing the photographs at R. 144 and 145 with the device illustrated in the drawings of this Smith patent at R. 222 and with the starting cage described in the specification of the patent and claimed in the single claim of the patent, that, while in the starting cage as illustrated, described and claimed in this Smith patent, the members, beams or timbers 9 9 of the patent are "*divergent*" (see Fig. 1 of the patent, at R. 222) and have their *outer* ends in the plane of the side walls of the box, in defendants' starting cage (see R. 144 and 145), the three beams or timbers there illustrated are not "*divergent*", are in each instance placed at some distance inwardly from the side walls of the box and do not have their outer ends "*in the plane of the side walls*", as illustrated, described and claimed in this Smith patent. This, of itself, in the light of the decisions of this Court cited *supra* and *infra*, would seem to clearly show that defendants' starting cage does not infringe the single claim of this Smith patent.

It will be noted when Smith filed his original application, he filed with it three claims, found at R. 197 and 198, all of which were rejected, and, in pursuance of said rejection, cancelled and abandoned; that afterwards, on Feb. 28, 1922, he presented the claim found at R. 222, which claim did not contain all of the elements and conditions found in the claim of the patent as granted. That claim was rejected and afterwards cancelled and abandoned by Smith. Afterwards, on Oct. 28, 1922, Smith presented another amended claim, found at R. 202. That claim was also rejected, and it was not until, by the amendment of Jan. 16, 1924, found at R. 205 and 206, by inserting into that claim additional modifications resulting in the single claim found in the patent, that his application was allowed on June 25, 1924 (R. 209).

There can be no question, under the circumstances, that all the features, elements and conditions specified in the claim of the patent as we have quoted that claim above and found in the italicized portion of that claim as quoted by us (all of which italicized conditions or elements are entirely absent from defendants' starting cage) are of the essence of the alleged and pretended invention, the subject-matter of this patent; and defendants' device does not infringe, because it does not embody the particular structure claimed by this Smith patent. See the decisions of this Court in I. T. S. Rubber Co. v. Essex Rubber Co., 272 U. S., 429, 444, and in Weber Electric Co. v. Freeman Electric Co., 256 U. S., 668, 677.

We respectfully submit that if a twentieth century invention was imparted to the starting cage illustrated and described in this Smith patent by making an essential part of that remarkable invention consist in dividing the compartments or stalls for dogs by means of "*wire mesh partially covered with fabric*" (and this is made an essential element or condition of the thing claimed in the patent), such a thing is not present in the starting cage of defendants. We hardly believe that in this twentieth century it took the genius of an inventor to make the partitions of a dog cage of wire mesh and to partially cover the wire mesh with fabric; nevertheless, that element or feature, which is entirely absent from defendants' starting cage, was presented as an essential condition or element in the claim of the patent, and it would seem that its presence in the aggregation of things claimed by the claim of this Smith patent was one of the things which finally persuaded the Patent Office to resolve doubts of novelty and invention in favor of allowing this Smith patent containing the extraordinary claim found therein and hereinbefore quoted.

As to non-infringement, we firmly believe there can be

no doubt whatever. On the other hand, it would seem clear, when the decisions of this Court in analogous cases and the principles announced therein are appreciated and understood, that the thing *claimed* and thus *patented* by this Smith patent is utterly destitute of patentable novelty and invention, in the light of matters of which this Court will take judicial notice. Applying to the facts in this case the principles announced by this Court in Concrete Appliance Co. v. Gomery, 269 U. S., 179-180; 184-185, it would seem that the thing patented by this Smith patent amounts, at best, merely to mechanical skill, and mechanical skill of a very low order at that, and does not rise to the dignity of an invention within the meaning of the patent law.

The patents to Stitzer (R. 330); to Stedeker (R. 338); to Andrew (R. 318); and to Whitehead (R. 311) all show starting devices for race courses in which one feature or the other, or many of them combined, found in the said Smith patent are present. Those starting devices for race courses show, in various forms, means such as doors or barriers suddenly opened or removed from in front of the animals, to permit them to leave the enclosure and start out for the race. They also show stalls or partitions, some of them made of wire mesh and some of them covered with fabric, to prevent injury to the animals while in the stalls. The aggregate of what those various patents disclose to those skilled in the art of constructing devices for races would seem to show want of patentable novelty and invention in the thing claimed by this Smith patent within the meaning of the decisions of this Court in such cases as Duer v. Corbin Cabinet Lock Co., 149 U. S., at page 222, and Concrete Appliance Co. v. Gomery, 269 U. S., at pages 179 and 180 and 184-185. But the nature of the thing disclosed and claimed by this Smith patent No. 1,507,439 presents another question in respect to what constitutes pat-

entable novelty and invention. It presents a question of a *mere aggregation of elements*, as distinguished from a true patentable *combination*. It would seem obvious that the *"walls formed of wire mesh partially covered with fabric"*, specified in the claim of this patent and illustrated in the drawings and described in the specification of the patent, in no way co-act with or modify or affect the operation of the rest of the elements or features of the starting cage claimed in that claim and illustrated and described in that patent. The front door of that patent, the latch, the springs and the divergent inclined members or timbers 9 9 of the patent will all operate in the manner disclosed in the patent whether or not there be present a plurality of compartments in the box or cage, and whether or not the walls of the plurality of compartments are *"formed of wire mesh partially covered with fabric."* The said walls, formed of wire mesh partially covered with fabric, would permit light and ventilation to pass through and from one stall or partition to the other and prevent the animals from being scratched by the wire and enable them to look at their companions through the upper part of the wire mesh whether or not the front door was hinged at the top and latched at the bottom, or hinged at the side and latched at the side, or whether or not, through the instrumentality of springs attached to the front door at the lower ends thereof and to the divergent inclined members at the upper ends thereof, the door was opened.

There is no more co-operation or true *combination* between the said *wire mesh partially covered with fabric* in the claim of the said Smith patent and the other features or elements of that combination than there was in the case of Reckendorfer v. Faber, 92 U. S., 347-356, between the eraser at one end of the pencil and the lead at the other, or than there was in the re-entrant bend of the roller shelf

and the other parts of the skeleton roller shelf in the case of the Hoffman patent No. 450,124 in the suit of Mfg. Co. v. Fenton, 174 U. S., 492, 498. Also see the decision of this Court in Grinnell Washing Machine Co. v. Johnson Co., 247 U. S., 426, 433.

It seems to us that the following excerpt from the opinion of this Court in Specialty Mfg. Co. v. Fenton Mfg. Co., 174 U. S., at page 498, is peculiarly apt here as showing that the claim of this Smith patent, in so far as it comprises as an essential condition or element thereof *"walls formed of wire mesh partially covered with fabric"* is not a claim for a patentable *combination*, but merely for a non-patentable *aggregation*, and therefore not for a *patentable invention* within the meaning of the patent law:

> "Putting the Hoffman patent in its most favorable light, it is very little, if anything, more than an aggregation of prior well-known devices, each constituent of which aggregation performs its own appropriate function in the old way. Where a combination of old devices produces a new result such combination is doubtless patentable, but where the combination is not only of old elements, but of old results, and no new function is evolved from such combination, it falls within the rulings of this court in Hailes v. Van Wormer, 20 Wall. 353, 368; Reckendorfer v. Faber, 92 U. S., 347, 356; Phillips v. Detroit, 111 U. S., 604; Brinkerhoff v. Aloe, 146 U. S. 515, 517; Palmer v. Corning, 156 U. S., 342, 345; Richards v. Chase Elevator Co., 158 U. S., 299. Hoffman may have succeeded in producing a shelf more convenient and more salable than any which preceded it, but he has done it principally, if not wholly, by the exercise of mechanical skill."

It inevitably follows, we submit:

(a) That defendants' starting cage for dogs does not infringe Smith patent 1,507,439; and

(b) That the claim of said patent is utterly destitute of patentable novelty and invention.

SMITH PATENT NO. 1,507,440, DATED SEPT, 2, 1924, APPLIED FOR MAY 24, 1921, FOR HOUSING FOR CONVEYOR CARS AND TRACKS.

This Smith patent is found at R. 254. In Fig. 1 thereof we find, in outline, the same shape and arrangement of parts illustrated in Fig. 1 of the prior Smith patent of 1921, No. 1,379,224 (one of the Smith patents in suit, found at R. 186). In both of these Smith patents we find the car with its rails, horizontal arm and *wheel at the outer end of the arm* and a housing—all described and illustrated as located at the *outer* side of the race course. In the said earlier Smith patent, found at R. 186, as has already been noted, in and by Claims 1, 2 and 3 of that patent, found at R. 192-b, the housing or casing, which is particularly illustrated in Fig. 2 of that patent at R. 187, *is claimed as a part of the combination the subject-matter of said claims.* The housing illustrated in Fig. 2 of that first Smith patent at R. 187 is, in all respects, identical with the housing illustrated in this Smith patent No. 1,507,440 at R. 254, except in the particular respects which we shall now point out.

In the housing of the said earlier Smith patent of 1921 the roof of the housing is not inclined, but would appear to be a straight flat roof. In the housing of that patent (see R. 187) and as that housing is described in the specification of that patent at R. 190, the roof of the housing is supported in the following manner:

"For the purpose of supporting the roof 1-a of the housing and the overhanging side toward the track, I have provided the brackets 6 mounted upon the inner sides of the posts 1 as shown, and I have also provided a truss rod 8, which is attached to the roof 1-a, passes over the top of the post 1 and is suitably anchored in the ground outside of the housing as at 9."

Now, the only difference in construction between this housing of the earlier Smith patent and the only housing illustrated and described in this Smith patent No. 1,507,440, found at R. 254, is that in the housing of this last named Smith patent the roof is slightly inclined towards the race course and *special means* are provided *for adjustment, to take care of any possible sagging of the roof and to keep the roof always at the desired elevation.* This latter is the only real and characteristic difference between the housing or casing of the two said Smith patents, and it is thus described in the specification of this Smith patent No. 1,507,440 at R. 256:

"For supporting the inner edge of the roof, and the inner side of the housing above the opening 14, I have provided truss rods as 12" (see Fig. 1 of this patent, at R. 254), "having one end attached to the upper portion of the posts 4 above the roof, and the other end attached to the upper portion of the timber, 8, with a turn buckle in between said ends" (this turn buckle is marked 13 in Fig. 1 of this patent) "*to provide means for adjustment to keep the roof always at the desired elevation.*" (Italics ours.)

The defendants' housing is illustrated by two drawings, the most correct and accurate of which was put in evidence by defendants' counsel in connection with the cross-examination of plaintiff's witness, Keene. That drawing (the

original exhibit was in the form of a blue print) is marked "Defendants' Exhibit C" and is found at R. 142; it was put in evidence at R. 76 and is referred to by plaintiff's witness, Keene, at R. 75, as follows:

> "The next picture, the blue print attached to Heintz's affidavit, shows the construction of the housing" (defendants' housing) "*as I saw it at Springdale Park;* it must have been taken on the turn because the tie is kind of slanting, *but it is a correct view of the housing.*" (Italics ours.)

The other sketch or drawing of defendants' housing is the one marked "Plaintiff's Exhibit 5", found at R. 117, which was referred to by the witness, Keene, and which was marked by him, to suit his own purposes or those of plaintiff, in one part thereof with the words "truss rod".

When we examine the true and more correct drawing of defendants' housing found at R. 142, it will be noted that there is there illustrated in cross-section the two vertical posts and a roof, a floor or bed on which the two rails for the car are laid, and the third or central rail which acts as a conduit for the electric current. For the rest, it simply shows an ordinary projection or roof, supported by a horizontal wooden beam, the latter being braced by two wooden braces, one of which is fastened by nails at its upper end to the inner part of the said horizintal beam and at its lower end to the longer vertical beam, and the other of which is nailed at its upper end to the extreme outer end of the said horizontal beam and at its lower end to the said longer vertical beam.

In defendants' device there is not present any "*adjustable stay rods*", or any *adjustable stay rod*, or any "*screw threaded adjustable stay rods*", and there is not present in defendants' housing any turnbuckle between or con-

necting any truss rods or stay rods; and defendants' device is not provided with any means of adjusting any truss rods or stay rods, so as to prevent the roof from sagging and to keep the roof always at the desired elevation. In defendants' housing the roof or projection over the rails is constructed as any such projecting roof or wooden awning over a door has been constructed from time immemorial, i. e., by nailing or otherwise securely fastening, to the beam or projection which supports the cover or boards for the roof, a board and then nailing, or otherwise securely fastening, the lower end of such last named board or support to the wall of the house or to a beam or projection connected with the latter.

Nevertheless, because of the peculiar wording and rather loose language used in Claim 1 of said Smith patent, which claim is found at R. 256 and 256-a, petitioner contends that defendants' said housing infringes that claim of the said Smith patent No. 1,507,440. In the Courts below, in the case at bar, petitioner contended that defendants' housing infringed all three of the claims of the said Smith patent. Claim 1 of said Smith patent is in the following words:

> "1. In a housing for covering tracks and cars having laterally extending arm operated upon said track, the combination of posts set in the ground at the sides of said track, timbers attached to said posts to form a frame, and boards attached to said timbers and posts to form a continuous enclosure above said track, and having a continuous opening in one side of said housing adapted to permit extension of the laterally extending arm therethrough, and truss rods attached to the closed side of the housing adapted to support the side of said housing above the said continuous opening."

In. Claim 2 of said patent the "*adjustable stay rods*" illustrated and described in the Smith patent are specifically made elements of the claim; and in Claim 3 of the said Smith patent "*screw-threaded adjustable stay rods*" are made essential elements of the claim.

So far as the housing or casing for a lure conveyer is concerned, such housing or casing having a continuous opening therein through which the lure-carrying arm passes and travels, the said housing also enclosing the car and its rails, such a structure is shown in the Smith patent of 1912, found at R. 276; and, as we have already seen, a housing having all of these characteristics, used for dog racing purposes, and differing only from the housing of this Smith patent of 1924, in that it had *no screw-threaded adjustable stay rods for adjusting and supporting the roof*, is illustrated and described in the Smith patent 1,379,224, of 1921, found at R. 187, and such a housing is actually *claimed* as an essential part of the device claimed by Claims 1, 2 and 3 of that patent of 1921. Moreover, it is a matter of common knowledge, in respect to electrically operated cars for conveying passengers, that the third rail and mechanism for making an electric contact, whether located under the ground or at one side of the track, has been for a great number of years provided with a housing and a slot in the housing, through which slot the arm or connection between the car and electric devices for conducting and transmitting electricity are passed, all such housings being provided, either on the side thereof, or on the upper part thereof, with a continuous slot or opening. Such a construction, for example, is found in the Bertram patent, of 1903, found at R. 343. And so far as concerns the stay rods or truss rods, threaded at their inner ends and connected together by a turnbuckle, to support the roof and tighten it in case of sagging, such devices are very

old and matters, we believe, of common knowledge. At any rate, they are shown as used for just such purposes in connection with roofs in the patent to Buckley, of 1885, at R. 347; in the patent to Harvey, of 1889, at R. 350; in the patent to Dunbar, of 1889, at R. 358; and in the patent to Delahunt, of 1896, at R. 365.

We contend, therefore: (a) That Claim 1 of Smith patent 1,507,440 (the only claim of this patent *now* relied upon by the petitioner, see petitioner's brief "Point G", page 51) is destitute of patentable novelty and invention; and (b) that said claim is not infringed by defendants' housing.

Clearly, the defendants' housing does not infringe any of the three claims of the said Smith patent, and the Courts below so held, in addition to holding the claims of this patent void. But it was not until after this case reached this Court that petitioner's counsel abandoned all contention as to the infringement of Claims 2 and 3 of said patent.

A claim is *absolutely void* when it claims more than belongs to the invention as the invention is illustrated and described in the patent.

> Robinson on Patents, Vol. 2, Sec. 537, page 154;
> Milligan v. Lalance & Grosjean Mfg. Co., 21 Fed., 570.

When a claim is obscure, or capable of different interpretations, the drawings and specification of the patent must be considered as exponents of the claim and as determining the meaning and application of the words used in the claim.

> Robinson on Patents, Vol. 2, Sec. 742, page 495;
> Matthews v. Iron Clad Mfg. Co., 124 U. S., 347, 351;
> Railway Reg. Mfg. Co. v. Third Ave. Ry. Co., 33 Fed., 31.

The decision of this Court in Fay v. Cordesman, 109 U. S., 408-421, illustrates and supports our contention in this case: that, while Claim 1 of Smith patent No. 1,507,440 (the only claim of that patent *now* relied upon by petitioner) does not expressly state—as do Claims 2 and 3—that the "*stay rods*" (marked "12" in the patent) are "*adjustable*", or "*screw threaded adjustable stay rods*"—but says "*truss rods attached to the closed side of the housing adapted to support the side of said housing above the said continuous opening*"; nevertheless, in harmony with the *only* construction illustrated in the drawings and described in the specification of the patent, and to "*provide means for adjustment to keep the roof always at the desired elevation*", as called for in the patent (see R. 256), *adjustable* stay rods, *threaded* and *provided with a turnbuckle*, must be read into Claim 1, or else that claim is void as not properly *claiming* the particular and only structure *disclosed* in the patent. In such circumstances, it matters not that Claim 1, thus construed, becomes substantially the same as other claims in the patent; unless thus construed, it is void as being broader than the *only* structure disclosed and described in the patent.

In Fay v. Cordesman, *supra*, the third patent sued on was for improvements in band saw machines. The patent contained seven claims, but plaintiff only relied upon Claims 1, 2, 3 and 4 (see 109 U. S., at page 417).

After quoting the specification of the patent and all the claims of the patent except Claim 7, this Court, reading into Claims 1 and 2 (see 109 U. S., at page 419) characteristics of the invention as disclosed in the patent, *but not found in defendant's device*, found that Claims 1 and 2 had not been infringed; it also found Claims 3 and 4 not infringed (see 109 U. S., at page 420). But the pertinent part of the opinion, applicable to the case at bar and to

the precise question with which we are dealing here is this: In that case, as in the case at bar with respect to this Smith patent No. 1,507,440, the plaintiff sought to ignore claims of the patent which, in terms, limited the claims to a combination of elements or conditions described and illustrated in the patent but not present in defendant's device (Claims 5 and 6 in *that* case; Claims 2 and 3 in the instant case), and to rely upon claims in which such elements or conditions were not, in terms, specified.

Dealing with this particular question, as applied to Claims 2 and 3 of the patent before the Court in that case, in which claims a certain spring "O" was not specified, finding no infringement of Claims 2 and 3, and considering, in the interpretation of Claims 2 and 3, the Claims 5 and 6 of the patent *but which Claims 5 and 6 the plaintiff in that case wished to ignore,* this Court holds, in that case, at page 420 of 109 U. S., as follows:

> "The spring O gives an elastic character to the tension. The effect of the arrangement or combination is to give an elastic vertical adjustment and also a horizontal adjustment. The whole object of the saddle with the lug l and the extension k is to adjust the arbor-bearing up and down and sidewise and at the same time give an elastic tension to the saw. The spring carries the weight of the saddle. There can be no operative arrangement of the saddle with the arbor-bearing which does not include the lug l, the screw N, the extension k, the screw M, the nut T, and the spring O. These are all elements in the arrangement or combination covered by Claim 3. The spring is essential in the patent, as a part of claim 2. The defendants have a rigid saddle, and no spring. *The fact that the spring is an element in claims 5 and 6 does not prevent its being an element in claim 3.*" (Italics ours.)

Paraphrasing what this Court says above and applying it to the Smith patent No. 1,507,440 we say: There can be no operative arrangement of the housing structure illustrated and described in said Smith patent *"to provide means for adjustment to keep the roof always at the desired elevation"* (R. 256) which does not include the means for accomplishing that object, which means consist of *the "adjustable stay rods" 18, screw-threaded at their inner ends, the said ends being connected by a turn buckle, all substantially as described and illustrated in the patent and specified elements of Claims 2 and 3.* The fact that such "adjustable stay rods", to accomplish the above stated purpose, are elements specified in Claims 2 and 3 of said Smith patent (claims not *now* relied upon by petitioner) does not prevent them from being essential elements or conditions of Claim 1.

Unless Claim 1 of said Smith patent be thus construed, it is void, not being for the thing *disclosed* in the patent.

And, thus construed, defendants' device, illustrated at R. 142 and also at R. 117, does not infringe said Claim 1.

On this question of non-infringement of Smith patent 1,507,440 and the limited construction that must be given to Claim 1 of that patent, when read in the light of the structure illustrated in the drawings and described in the specification of the patent, see this Court in Computing Scale Co. v. Automatic Scale Co., 204 U. S., at pages 621 and 622, and also the recent opinion (rendered Dec. 8, 1930) of this Court in Lektophone Corp. v. The Rola Co., being Case No. 19, October Term, 1930.

THE PRIOR DECISIONS RELATING TO THE SMITH PATENTS IN THIS SUIT.

The first suit relating to these Smith patents was that of Smith v. American Electric Rabbit Racing Assn. et al., and the only real "*opinion*" in that case (an utterly unsound one) is that of the District Court for the Eastern District of Louisiana, by Burns, J., reported in 21 Fed. (2nd), 366, affirmed, as to its "*conclusions*", by the C. C. A. for the Fifth Circuit in 26 Fed. (2nd), 1016.

As we devote the last chapter of this brief to said decisions in that Louisiana case, we only desire to say here, as to that case, the following things: It appears from the record in that case, brought up by us to this Court on the petition of Heintz and American Electric Rabbit Racing Assn. for certiorari (No. 449, October Term, 1928), which petition was denied (see 278 U. S., 626, and this brief at page 2 *supra*), and also, as we believe, it sufficiently appears from the said opinion of the District Court in that case, in 21 Fed. (2nd), 366: that the validity of the three Smith patents before the Court in that case was not contested, the then counsel for defendants in that case announcing, at the opening of the case in the District Court, that he would not dispute the validity of any of said three Smith patents.

So that the only questions tried and determined by the District Court in that case related to the infringement of said patents by the defendants' devices before the Court in that case.

It also appears, from the opinion of the District Court in that case, in describing the defendants' devices before it in that case, as also appears from petitioner's brief in the instant case, that the defendants' devices in that case were, in construction, substantially identical with defendants'

devices before the Courts in the Sixth Circuit and, therefore, before this Court in the case at bar.

And yet, *mirabile dictu*, in view of said situation, the following pertinent and interesting facts appear in respect to the Smith housing patent No. 1,507,440: As we have said and as the opinion of the District Court in said New Orleans case shows (see 21 Fed., 2nd Series, Division 7, at pages 372-374), that Court held that the defendants' housing in that case, which, in construction, was substantially identical with defendants' housing in the case at bar, infringed Claims 1, 2 and 3 (all the claims) of said Smith patent 1,507,440; and yet, in the case at bar, petitioner *now* contends that respondents' housing only infringes Claim 1 of said Smith patent (see petitioner's brief at page 51).

This, we submit, is virtually an admission that the Courts in the 5th Circuit were at least in error in so far as they found that defendants' housing in that case—which was virtually the identical housing of respondents here—infringed Claims 2 and 3 of said Smith patent No. 1,507,440.

The next reported opinion in order of date, though not in order of publication, in respect to the three Smith patents before this Court in the case at bar is the opinion of Judge Hickenlooper, then District Judge, now Circuit Judge, in the case now before this Court for review. That opinion, dated June 23, 1928, is found at R. 89; it is also reported in 39 Fed. (2nd), 92. That opinion speaks for itself and resulted in the decree dismissing the bill as to all of these three Smith patents, said decree being found at R. 100, and finds that defendants' devices before the Court in this case did not infringe Claims 1 and 2 (the only claims in issue) of Smith patent 1,379,224; that said devices did not infringe the Smith starting cage patent No. 1,507,439; and that the Smith housing patent 1,507,440 is

lacking in patentable novelty and invention, but, if valid, was not infringed by defendants' housing, and dismisses the bill. It will be noted from that opinion of Judge Hickenlooper (see R. 95) that he had before him and considered the opinion of the District Court in the said New Orleans case in 21 Fed. (2nd), 366, and the action of the C. C. A. for the 5th Circuit in affirming the decree of the District Court in that case (26 Fed., 2nd Series, 1016), but felt constrained not to follow those decisions. Afterwards, and on appeal from the said decree and opinion entered and delivered in the case at bar by the District Court, this suit against the Springdale Amusement Park, Ltd., et al., was argued before and submitted to the C. C. A. for the 6th Circuit, which Court, by its unanimous opinion, by Moorman, C. J., reported in 40 Fed. (2nd), 173, which opinion is also found here at R. 368, affirmed the decree of the District Court. That opinion of the C. C. A. for the 6th Circuit speaks for itself, and while it affirms the decree of the Court below in dismissing the bill, it differs only from the opinion of Judge Hickenlooper in that it finds the Smith starting cage patent, No. 1,507,439, not only invalid, but, if valid, not infringed.

The only other reported decision in respect to any of these Smith patents is one rendered by the C. C. A. for the 10th Circuit in the case of Magic City Kennel Club, Inc., et al. v. Smith, which opinion, rendered Jan. 21, 1930, is reported in 38 Fed. (2nd), 170. That opinion of the C. C. A. for the 10th Circuit was rendered after Judge Hickenlooper had rendered his opinion in the case at bar but about three months before the C. C. A. for the 6th Circuit rendered its opinion in the case at bar.

It appears from the opinion of the C. C. A. for the 10th Circuit in the said Magic City Kennel Club case that the Smith patents before the Court in that case were Smith pat-

ent 1,379,224 and the Smith housing patent 1,507,440, both of which Smith patents are before the Court in the case at bar; but the Smith starting cage patent, No. 1,507,439 (another Smith patent before this Court in the case at bar) was not before the Court in that case in 10th Circuit. The third Smith patent, No. 1,630,812, which was before the C. C. A. for the 10th Circuit in the said Magic City Kennel Club case, was one of the many Smith patents originally declared upon in petitioner's bill in the case at bar (see 10th clause of bill, at R. 7), but one of the Smith patents which the plaintiff-petitioner in this case, by her counsel, declared she would not rely upon at the hearing (see R. 60). In said opinion of the C. C. A. for the 10th Circuit that Court considered the opinion of the District Court in the New Orleans case (21 Fed., 2nd Series, 366) and the action of the C. C. A. for the 5th Circuit in affirming the decree of the District Court in that case, in 26 Fed. (2nd), 1016, but refused to follow them (see 38 Fed., 2nd Series, at page 171).

The said Magic City Kennel Club case was taken before this Court by certiorari, and, as we are informed at this writing, was argued and submitted to this Court on, to-wit, the 27th of January, 1931. It appears from the opinion of the C. C. A. for the 10th Circuit in the Magic City Kennel Club case, 38 Fed. (2nd), 173, that the defendants' devices in that case were very similar to defendants' devices in the New Orleans case and in the case at bar and that that Court held that such devices did not infringe either the Smith patent 1,379,224 or the Smith housing patent 1,507,440. As to the said Smith housing patent, No. 1,507,440, the C. C. A. for the 10th Circuit, in 38 Fed. (2nd), 173, while it points out that the validity of that Smith patent was not specifically in issue in that case, nevertheless states that that Court would not be war-

ranted in affirming a decree predicated on a device clearly not patentable. It would seem clear from that opinion that that Court held that that Smith housing patent No. 1,507,440 was void for lack of patentable novelty and invention, and also that that patent was not infringed.

THE OPINION OF THE DISTRICT COURT IN SMITH V. AMERICAN ELECTRIC RABBIT RACING ASSN. IN 21 FED. (2D), 366.

This case would not be before this Court but for the fact that the *reasoned opinion* of the United States Circuit Court of Appeals for the Sixth Circuit, rendered in this case on April 15, 1930 (reported in 40 Fed., 2nd Series, 173), is in clear conflict with the *mere conclusions* reached by the United States Circuit Court of Appeals for the Fifth Circuit in a case under the same patents and in which the defendants' devices were substantially identical with defendants' devices in the case at bar—the case of American Elec. Rabbit Racing Assn. et al., Appellants (Defendants), v. Smith etc., reported in 26 Fed., 2nd Series, at page 1016.

We mentioned above the *"reasoned" opinion* of the C. C. A. for the Sixth Circuit in contrast with the announced *"mere conclusions"* of the C. C. A. for the Fifth Circuit, because, as appears from what the Appellate Courts did in said cases, the C. C. A. for the Sixth Circuit (see 40 Fed., 2nd Series, 173-176) did, in fact, deliver an opinion which not only sets forth the essential facts in the case before it, but also quite fully states *the reasons for giving the judgment which it pronounced upon the case,* thus rendering an *opinion* within the true, technical, legal definition of an *"opinion"* (see Baldwin's Century Edition of Bouvier's Law Dictionary, at page 876).

On the other hand (see 26 Fed., 2nd Series, at page 1016) what the C. C. A. for the Fifth Circuit did, in that case before it, was merely this: to state the numbers of the three Smith patents before the Court in that case; to state that the opinion of the District Court is reported in 21 Fed. (2nd), 366; and then, without adopting the opinion of the District Court as it own, merely to state: "We agree with the *conclusions*" (the emphasis is ours) "of the District Court. Affirmed."

This, according to Bouvier's Law Dictionary, technically and accurately speaking, in legal practice, is not an opinion, as it is not "*the statement of reasons delivered by a judge or court for giving the judgment which is pronounced upon a case*".

And, in referring to what said C. C. A. for the Fifth Circuit did in that case, as reported in 26 Fed. (2nd), at page 1016, the C. C. A. for the Tenth Circuit, in its opinion, in Magic City Kennel Club et al. v. Smith (see 38 Fed., 2nd Series, at page 171), after referring to the opinion of the District Court, by Burns, J., in Smith v. American Rabbit Racing Assn. (21 Fed., 2nd Series, 366), says: "*The Court of Appeals of the Fifth Circuit affirmed the decree, without opinion.* Id., 26 Fed. (2d) 1016".

Therefore, so far as relates to that suit in the Fifth Circuit, by reason of which and the opinion of the C. C. A. for the Sixth Circuit *supra* the instant case is before this Court, the only *opinion*, giving reasons for the decree (an interlocutory decree) entered in that case in Fifth Circuit, is the *opinion* of District Judge Burns, reported in 21 Fed. (2nd), 366. In that opinion (21 Fed., 2nd, 366), the District Judge, in discussing the identical three Smith patents before the Courts of the Sixth Circuit and before this Court in the case at bar, recognizes the following facts

which are common to the case before him and the case at bar:

(1) That, as to the Smith patent No. 1,379,224, for *"Dog Racing Amusement"*, found here at R. 186-192c and with respect to which, in the case at bar, the plaintiff-petitioner elected to stand only on Claims 1 and 2 thereof (see opinion of Judge Hickenlooper, R. 89, and decree, R. 100), the following specified conditions and elements are conditions and elements forming part of the "machine" illustrated in the drawings of said patent, described in the specification of said patent and expressly and clearly *specified* in Claims 1 and 2 of said patent:

In Claim 1, that the combination of elements therein specified shall include (a) "a casing extending around the *outer* side of the race course"; and (b) "a wheel rotatably mounted on and supporting the arm at the projecting end thereof."

In Claim 2, that the combination of elements therein specified shall include "a horizontal extending arm *hinged* to said car" (the conveyor car specified in the claim); and (b) "a wheel rotatably mounted near the end of said arm and resting upon the ground."

(2) That in the defendants' structure in that case (as is also true of defendants' device in the case at bar, see R. 75 and 77 and also reference at R. 77 to the Creveling patent, said Creveling patent being found at R. 147, and photograph of defendants' device found at R. 140), the casing or housing extends around the *inner* side of the race course and there is not present, in defendants' device, the element *"a wheel rotatably mounted on and supporting the arm at the projecting end thereof"*, or any wheel at all (an express condition and positive element of Claim 1).

(3) That in the defendants' device in that case (as is

also true of defendants' device in the case at bar) the arm which carries the lure is not "*hinged*" to the car, but, as petitioner's witness, Keene, states, at R. 75 and R. 77, "*there is no wheel at the end of the lure-carrying arm*". * * * "*The arm is supported by the disks; it is rigidly supported*". In defendants' device (see Keene, R. 77) the arm is fastened to the car in the manner illustrated by the Creveling patent, found at R. 147-148, and as also illustrated by the photographs at R. 140 and 141.

(4) Although Judge Burns found the facts, as to the construction of defendants' device, to be what we have stated above, nevertheless, on a strange application of the doctrine of mechanical equivalents, he found, in that case, that defendants' device infringed the said Claims 1 and 2 of said Smith patent No. 1,379,224.

When the facts in this case and the said case in the Fifth Circuit are kept in mind, it will be seen that Judge Burns, in and by his opinion (21 Fed., 2nd, 366-372), invoking the decision of this Court in Winans v. Denmead, 15 Howard, 330 (which case, in its facts, is radically different from the facts in the case before Judge Burns and from the facts in the case at bar), holds:

(1) That although Claim 1 of Smith patent No. 1,379,224, *in harmony with the only construction illustrated and described in that patent*, and because of the fact that the conveyor car, at the end of its course around the track (see Fig. 1 of this Smith patent, R. 186, and specification of that patent, first paragraph, at R. 192a) is diverted onto the switch and track to the den or enclosure where the car and the lure are thus concealed from view of the hounds after the race, which den or enclosure (see top of Fig. 1 of patent, at R. 186) is located entirely *outside* the race course, specifies that the casing shall extend "around the *outer* side of the race course"—that nevertheless that

qualification and express limitation in Claim 1 ("a casing extending around the *outer* side of the race course") is of no consequence and can be ignored.

(2) That Judge Burns, in his said opinion, also holds, as to Claim 1 of this Smith patent, that the combination of elements specified in that claim is present in defendants' device, although the element of "*a wheel rotatably mounted on and supporting the arm on the projecting end thereof*" (a positive element, with a definite function ascribed to it both in the *specification* and in the *claim*) was entirely absent in defendants' device before him in that case, as his opinion shows.

(3) As to Claim 2 of this Smith patent No. 1,379,224, although that claim, in harmony with the drawings and specification of that patent (see particularly Figs. 2 and 3, R. 187 and 188, and the description in the specification of that patent, R. 191) and in order to enable the arm which carries the lure to be capable of vertical movement and to keep the wheel, at its outer end, always in contact with the ground while being thus able to adjust the arm to any unevenness on the course, expressly provides that that arm shall be "*hinged*" to the car, and that said "*hinged*" arm shall be provided with "*a wheel rotatably mounted near the end of said arm and resting upon the ground*"; nevertheless, Judge Burns, in his said opinion, ignores entirely (or treats as of no consequence) these positive conditions and elements, particularly specified in Claim 2 and described and illustrated in the specification and drawings of the patent, and holds: that defendants' device before him in that case, in which the arm at its inner end was rigidly held in place on the car, was *not hinged*, had *no provision to allow for vertical motion* and was provided *with no wheel at all*, much less "*a wheel rotatably mounted*

near the end of said" (hinged) "arm", embodied the invention *claimed* by Claim 2 of that patent.

Ignoring, or treating as of no consequence, the said conditions and positive elements present in said Claims 1 and 2 and Smith's definition and description of what he *disclosed* in his drawings and specification and particularly *claimed* as his invention, because Judge Burns seemed to think that defendants' device in that case, made under the Creveling patent (the patent found here at R. 147), accomplished the purpose or result of concealing the car in the housing while travelling around the course, and that the car carried an arm projecting horizontally over the course and carrying a lure at its outer end, *ergo* it necessarily followed, on his interpretation of this Court's decision in Winans v. Denmead, that, regardless of the terms of said claims, regardless of the fact that a positive element of each of said claims (the said wheel at the outer end of the arm) was entirely absent in defendants' device, and that, in defendants' device, the casing or housing extends around the *inner* side of the race course (see Figs. 1 and 2 of Creveling patent, at R. 147) instead of the *outer* side, as illustrated and described in said Smith patent and specified in Claim 1 of this Smith patent, and regardless of the fact that the "*hinged*" arm illustrated and described in said Smith patent and specified in Claim 2 of said Smith patent is entirely absent in defendants' device before the Court in that case (all of which things are true in the case at bar)—nevertheless defendants' device in that case infringed said Claims 1 and 2 of said Smith patent.

Such a conclusion, in view of the express terms and limitations as to *number* of elements and *conditions* of elements or structures found in said claims, involved a *non sequitur*, even if it were true (which it is not in point of fact) that in the said case in the Fifth Circuit, before

Judge Burns, defendants' device performed the same function or functions as the function or functions performed by the machine or device of said Smith patent, and which machine, after having been illustrated and described in the drawings and specification of said Smith patent No. 1,379,224 (in order to disclose that alleged invention and *"the principle thereof"*), was then distinctly *claimed* by Smith, according to the intent and purpose of Sec. 4888 R. S. U. S., by said Claims 1 and 2. For it is obvious that *the particular means* (the particular *conditions, number* and *arrangement* of *elements* specified in said claims of said Smith patent) were not present in defendants' machine before the Court in that case; and it has been repeatedly decided by this Court, as recently reaffirmed in I. T. S. Co. v. Essex Co., 272 U. S., at page 444, that when, in order to obtain a patent and in accordance with Sec. 4888 R. S. U. S., the patentee has described his machine or device and explained *"the principle thereof"* in his specification and then particularly pointed out and distinctly claimed (as he must do under that Statute) the particular improvement or combination *"which he claims as his invention"* (all of which is true as to this Smith patent and the claims thereof), it is utterly immaterial, even if it be true in point of fact, that defendants' device or machine functions in the same manner as that of plaintiff's patent, when the claims of the plaintiff's patent (as was true in the said case before Judge Burns and is true in the case at bar) are restricted, as to numbers of elements, or by limiting clauses, and there is not present in defendants' device or structure, either in number of elements, or in conditions and restrictions specified in the claims, *the means*—the particular thing or things *claimed* by the *claims* of plaintiff's patent.

And it is still true, as it has always been true, under our patent system, and as this Court declared in Leeds & Catlin v. Victor etc. Co., 213 U. S., 301, that the thing *patented* is the thing *claimed*, and nothing else.

Judge Burns, in his said opinion in the said case in the 5th Circuit, not only erred in applying the law to the facts in the case before him, even as those facts are stated by him in his opinion, but he also erred in point of fact, because the principle of operation of and the functions performed by defendants' device in that case (as is also true of defendants' device in the case at bar) are not identical with the principle of operation of and the functions performed by the particular machine disclosed, described and claimed in the said Smith patent No. 1,379,224.

In the first place, the principle of operation of the machine illustrated and described in this Smith patent No. 1,379,224 is one in which the housing or casing which encloses the car is located, as described in the specification of that patent and particularly illustrated in Fig. 1 of that patent, on the *outer* side of the elliptical or oblong race course illustrated in the patent, with these results: that the hounds, in following the lure, will take the longer course in the track or race course, as illustrated in Fig. 1 of that Smith patent, and that, as the car travels on rails, at the curves, as is true of all curves on railways, the outer rail is slightly higher than the inner rail, with the result that the car, as it rounds the curves, is slightly tilted, the effect of which, if the arm were rigidly fastened to the car at its inner end and not *hinged*, as it is illustrated, described and claimed, would be that the arm might not give sufficiently at its outer end and be snapped off or broken. The same disaster might also happen, in the device of said Smith patent, due to any unevenness on the course itself.

Another principle of construction and operation peculiar to the device of said Smith patent is this: In that structure, as contemplated, disclosed and described in that Smith patent No. 1,379,224, the arm, which is *hinged* to the car, so as to be capable of more or less upward or downward movement in a vertical direction, *and which carries a wheel at its outer end*, so as to prevent the outer end of the arm which carries the lure from striking the ground, and which wheel also *performs the function of supporting the arm at its outer end*, has no means of being retracted or drawn into the casing or housing, but, in the construction illustrated and described in the said Smith patent, at the end of the course, as described in the specification and illustrated at the top right-hand side in Fig. 1 of said Smith patent, after the car, which carries the *hinged* arm *provided with a wheel at its outer end*, has made the complete course, the car with its projecting arm, lure and wheel are all shunted onto a switch or track extending completely outside of the race course from the outer side of the race course, and then a door is closed. The arm and lure of this Smith patent do not "*disappear into the casing*", as stated at the foot of page 4 of petitioner's brief. These things characterize the principle of construction and operation of the device of this Smith patent. In defendants' device before Judge Burns in that case (as is true of defendants' device in the case at bar) however, which device, as his opinion states, is constructed in accordance with the said Creveling patent, found at R. 147 and 148, the housing is located on the *inner* side of the track or race course, and the car, at the end of its course, is not taken out of the housing or casing and not taken outside of the race course itself, but remains on the track, in the housing. In defendants' device, the arm, which carries the lure at its outer end, is *rigidly fastened*, at its inner end, to a disk

located on the frame of the car, as particularly illustrated in Figs. 3 and 5 of the said Creveling patent at R. 148, and that arm is *not hinged* to the car and is incapable of any up and down or vertical movement independently of the movement of the car, and that arm is not provided with any wheel at all and therefore is not provided with any wheel at its outer end resting upon the ground and performing the function of supporting the arm at it's outer end. In defendants' device, as the track, car and housing are located at the *inner* side of the race course, not only do the hounds in quest of the lure take the inner or shorter course around the curves, but, at the curves, the outer rail of the track being slightly elevated above the inner rail (a matter of common knowledge) the lure-carrying arm, *rigidly fastened* at its inner end to the car, takes the same tilt as the car—in a direction away from the ground, thus tending to keep the outer end of the arm from contact with the ground. As to this, also see drawing at R. 142 and the testimony of plaintiff's witness, Keene, relating thereto at foot of R. 75.

In that device of defendants, made in these respects in accordance with the said Creveling patent, when the race is started the arm is pulled out manually against the resistance of the spring 6, so that its outer end extends over the race course, as illustrated in Figs. 2 and 3 of the said Creveling patent at R. 147 and 148, and then locked in that position, at right angles to the longitude of the frame of the car. At the end of the course that arm is automatically tripped by the mechanism illustrated in the drawing of the Creveling patent at page 148 of the record, and the spring 6, illustrated in Fig. 3 of said Creveling patent, then pulls the arm with its lure at its outer end back into the casing, thus concealing the arm and the lure in the housing and from the hounds.

Therefore, in the sense that in defendants' device in that case before Judge Burns (as is also true of defendants' device in the case at bar) the casing or housing, the car and the tracks for the car are all located on the *inner* side of the race course; and in the sense that the car with its lure-carrying arm, etc., is not taken out of the race course at all; and in the sense that the lure-carrying arm is not *hinged* to the car at the inner end of the arm, but is *rigidly* held in place on the car at the inner end of the arm; and in the sense that the lure-carrying arm is not provided at its outer end or anywhere with any wheel at all—much less with a wheel for supporting the outer end of the arm and preventing the outer end of the arm from coming in contact with the ground; and in the sense that in defendants' device the lure-carrying arm is incapable of any upward and downward or vertical movement—in all these senses not only *is the principle of construction and operation of defendants' device different from that disclosed, illustrated, described and claimed in the Smith patent,* but defendants' device *functions* in a different manner from that of the said Smith patent No. 1,379,224.

Therefore, both in fact and in law, in the respects above alluded to, Judge Burns' opinion is pregnant with error. In the case before Judge Burns, as is also true in this case from the Sixth Circuit which is now before this Court on certiorari, not only is the principle of operation of defendants' device different from the principle of operation of the device of the said Smith patent, and not only does defendants' device function in a different manner from that disclosed, described, illustrated and claimed in the said Smith patent No. 1,379,224, but also, in number of elements and in limitations as to construction and arrangement of elements, the defendants' device is not the device

claimed (patented) by Claims 1 and 2 (the claims in issue in the case at bar) of said Smith patent No. 1,379,224.

A false premise, adopted by Judge Burns in reaching the conclusion that the defendants' device in that case before him infringed said claims of this Smith patent, is this: Having reached his own conclusion *as to what he conceived Smith had invented,* he then proceeds to recast the claims of the patent, or to so construe them, as to make the claims cover, not the combination and arrangement of elements as *disclosed* by the patent and as *particularly claimed* by the alleged inventor, but so as to embrace what he conceived to be the step in advance in the art which Smith had made. In his opinion, with reference to this Smith patent No. 1,379,224 and as to what he concluded Smith had invented, the Judge states, at page 372, first column, of 21 Fed. (2d):

> "Here Smith successfully combined known elements. The substantial advance he made in the art resulted principally from his adaptation of a horizontally inclined lure-supporting arm projecting out of a longitudinally continuous opening in the conveyor housing" * * *.

Granting, for argument's sake only, that the foregoing statement of the Judge correctly states an advance over the prior art and that Smith invented such a thing, the answer is: *that is not the thing which Smith, in pursuance of the requirements of the law as expressed in Sec. 4888, R. S. U. S., particularly pointed out and distinctly claimed as the particular combination of elements constituting "his invention"; it is not the thing patented, i. e., claimed, by Smith in this patent.*

Moreover, as this Court has repeatedly held, it is the

province of the inventor to make his own claim, as it is his province to restrict it; what the inventor may have invented, but not claimed, he abandons; and the Courts are powerless, under the guise of construing claims of a patent, to accomplish what can only be lawfully done, if done at all, under the reissue statute (Sec. 4916, R. S. U. S.); and it is never permissible for the Court to read out of a claim, by construction, an element, or a condition, of a device or structure, which element or condition the patentee, by his specification and claims, has defined or described as part of, or as essential to, the invention which he *claims* in his patent.

An early and leading decision of this Court, rendered as far back as 1861, cited and the doctrine of which is reaffirmed by this Court in McClain v. Ortmayer, 141 U. S., at page 425, as well as in many other later decisions of this Court, and which serves admirably to illustrate the fallacies, both in the reasoning and in the conclusions of the said opinion of Burns, J., is that in Vance v. Campbell, 1 Black (66 U. S.) 427-429. In that case the patent in suit was one for certain improvements in cooking stoves. This Court there points out that the patentee, by the specification of his patent, illustrated, described and claimed his device as one which, due to its construction, would do away with certain irregularities that would otherwise exist in the distribution of the heat around the oven of a stove. To accomplish the desired result, his patent described that he placed a plate A in front of the cold air chamber, so as to form a flue in front, and otherwise arranged his device as claimed in his patent. As this Court points out (see pages 428 and 429 of 1 Black), the defendant's stove had no plate A in front of the cold-air chamber, and hence one of the elements of plaintiff's combination was not

present in defendant's device. And then this Court says, in that case:

> "The plaintiff, however, sought to get rid of that objection, by proving that that part of his contrivance and claim was immaterial and useless" (just as in the case at bar and in the said case in the Fifth Circuit the plaintiff contends that the wheel specified in the claim of the Smith patent—a thing not present in defendants' device—is not essential, as Judge Burns also found) "and that the diffusion of the heated air around all sides of the oven would be effectual without it."

Then, after pointing out that plaintiff relied on his patent for the measure of his right, as he had to do under the law, and that the defendant had denied the infringement as charged and in finding no infringement and reversing the judgment below, this Court says in that case, at pages 429 and 430 of 1 Black (66 U. S.), what is peculiarly applicable here, as refuting the opinion of Judge Burns in that case in the Fifth Circuit as well as the specious argument of petitioner's counsel in the case at bar, as follows:

> "Besides the above view, it is most apparent, from an examination of the specification, that the patentee not only described, but claimed the front flue formed by the plate A, fig. 2, as a material and important part of the arrangement for distributing equally the hot air on the several sides of the oven. To prevent irregularities, referred to and particularly described, he observes: 'I place the plate A, as in fig. 2, so that it will form a flue in front of the cold chamber, whose mouth (as it is called) is at the same distance from the flue above the oven that the lower end of the pipe i is above the flue below the oven; and these

flues being at all times unobstructed, their action is uniform, and the heat is equally distributed, under all circumstances, on the several sides of the oven.' The patentee might as well have undertaken to prove any other part of the combination immaterial and useless, as the part above, and its uses so particularly described. Indeed, according to the doctrine contended for, a patent would furnish no distinct evidence of the thing invented, as that would depend upon what part of the specification and claim the jury might think material or essential."

The case of Vance v. Campbell was a case at law, as is true of many of the early patent cases which came before this Court, but, of course, the same principles apply to a suit in equity. Neither in a case at law, before a jury, nor in a case in equity, tried before a Judge alone, is it permissible for the jury, or the Judge, to determine that a particular element or part of a device specified as an element of the device claimed in the patent is not material or essential. This is precisely the error which Judge Burns fell into in the said case in the Fifth Circuit, when he held that the *wheel* at the outer end of the lure-carrying arm, the *hinged* arm, etc., specified elements and conditions in claims 1 and 2 of this Smith patent, were not material or essential parts of the particular alleged invention the subject matter of said claims.

The said decision of this Court in the said case of Vance v. Campbell, 1 Black (66 U. S.) 427, has been repeatedly followed and expressly cited with approval by this Court, in numerous decisions, in support of the proposition: *that it is not permissible to enlarge a claim by taking out of it, or reading out of it by construction, any of the elements specified therein; that a machine or device which is de-*

scribed and claimed in a patent as consisting of a number of elements co-ordinated and arranged to accomplish a certain purpose or result is an entirety; that every element specified in the claim is conclusively presumed to be essential to the invention claimed; and that another machine or device, which is lacking in any element specified in the claim, is not the machine or device of such patent and does not infringe the same.

Some of the decisions of this Court, to the effect just stated, and which expressly follow and cite the case of Vance v. Campbell, *supra*, are the following:

Gill v. Wells, 22 Wall. (89 U. S.), at pages 24-25;
Gage v. Herring, 107 U. S., at page 644;
Electric Signal Co. v. Hall Signal Co., 114 U. S., at page 98;
McClain v. Ortmayer, 141 U. S., at page 425.

In the last named case of McClain v. Ortmayer, decided by this Court in 1891, in referring to plaintiff's contention in that case and in connection with the reference to its early decision in the said case of Vance v. Campbell, this Court says what is peculiarly applicable to the erroneous decision of Judge Burns in respect to this Smith patent and to the fallacious contention of petitioner's counsel in the case at bar in respect to Claims 1 and 2 of said Smith patent, this Court stating in its opinion in said case of McClain v. Ortmayer, at page 425 of 141 U. S., as follows:

> "It is true that, in a case of doubt, where the claim is fairly susceptible of two constructions, that one will be adopted which will preserve to the patentee his actual invention; but if the language of the specification and claim shows clearly what he desired to secure as

a monopoly, nothing can be held to be an infringement which does not fall within the terms the patentee has himself chosen to express his invention. The principle announced by this Court in Vance v. Campbell, 1 Black 427, that, where a patentee declares upon a combination of elements which he asserts constitute the novelty of his invention, he cannot in his proofs abandon a part of such combination and maintain his claim to the rest, is applicable to a case of this kind where a patentee has claimed more than is necessary to the successful working of his device.

Applying these familiar principles to the case under consideration, we are forced to the conclusion that the curved hook of the defendant is not an infringement of the double spring described in the plaintiff's specification and claim. While a single spring or hook embracing the fore wale of a collar may be equally as efficacious, the patentee is no more at liberty to say that the spring encircling the after wale is immaterial and useless than was the patentee in Vance v. Campbell to discard one of the elements of his combination upon the same ground."

In the last-named case of McClain v. Ortmayer (141 U. S., 419-429), this Court announces and reaffirms principles applicable to the construction of claims of letters patent, all of which were either ignored or misapplied by Judge Burns in the said case in the Fifth Circuit in his consideration of the claims of the three Smith letters patent in suit as applied to the defendants' devices in that case, which sound and settled principles petitioners' counsel would have this Court ignore in the case at bar.

This Court in the said case of McClain v. Ortmayer, in considering plaintiff's patent and defendants' device before it in that case and by reference to several of its earlier decisions, lays down the following principles at pages 423-

425 of 141 U. S., portions of the following quotation being purposely italicized by us to show how Judge Burns in his decision in the said case in the Fifth Circuit has misapplied the law to the facts in the case before him, and also, without lawful power, has taken liberties in the construction of the very definite claims of the Smith letters patent in suit, so as to make such claims include *more than their language fairly imports*—a liberty which this Court has repeatedly declared that the Courts have not the power to exercise:

"It is evident from this patent and from the entire testimony that the defendants made use of a single hook D, embracing the front rool of the collar only, while the appellant McClain has limited himself, perhaps unnecessarily, to the elastic springs s s, *which the drawings and the whole tenor of the specification show to be double and intended to be clasped around both the fore and after wales of the collar.* While the patentee may have been unfortunate in the language he has chosen to express his actual invention, and may have been entitled to a broader claim, *we are not at liberty, without running counter to the entire current of authority in this court, to construe such claims to include more than their language fairly imports.* Nothing is better settled in the law of patents than that the patentee may claim the whole or only a part of his invention, *and that if he only describe and claim a part, he is presumed to have abandoned the residue to the public.* The object of the patent law in requiring the patentee to 'particularly point out and distinctly claim the part, improvement or combination which he claims as his invention or discovery,' is not only to secure to him all to which he is entitled, *but to apprise the public of what is still open to them.* The claim is the measure of his right to relief, and while the specification may be referred

to to limit the claim, it can never be made available to expand it. Thus in Keystone Bridge Company v. Phoenix Iron Company, 95 U. S. 274, 278, the manufacture of round bars, flattened and drilled at the eye, for use in the lower chords of iron bridges, was held not to be an infringement of a patent for an improvement in such bridges where the claim in the specification described the patented invention as consisting in the use of wide and thin drilled eye bars applied on edge. In delivering the opinion of the court, Mr. Justice Bradley observed: 'It is plain, therefore, that the defendant company, which does not make said bars at all' (that is, wide and thin bars), 'but round or cylindrical bars, does not infringe this claim of the patent. *When a claim is so explicit, the courts cannot alter or enlarge it.* If the patentees have not claimed the whole of their invention, and the omission has been the result of inadvertence, they should have sought to correct the error by a surrender of their patent and an application for a reissue. * * * *But the courts have no right to enlarge a patent beyond the scope of its claim as allowed by the Patent Office*, or the appellate tribunal to which contested applications are referred. When the terms of a claim in a patent are clear and distinct (as they always should be), the patentee, in a suit brought upon the patent, is bound by it. * * * He can claim nothing beyond it.'

Similar language is used in Railroad Company v. Mellon, 104 U. S. 112, in reference to a patented locomotive wheel. In Masury v. Anderson, 11 Blatchford 162, 165, it was said by Mr. Justice Blatchford: 'The rights of the plaintiff depend upon the claim in his patent, *according to its proper construction, and not upon what he may erroneously suppose it covers.*' "

The decision of this Court in McClain v. Ortmayer, *supra*, and the principles announced by this Court in our

quotations from that decision *supra*, as well as reaffirmance of the doctrine laid down by this Court in Keystone Bridge Co. v. Phoenix Iron Co., 95 U. S., 274, are cited and referred to by this Court in numerous later decisions, as for example in the following cases:

Deering v. Winona Harvester Works, 155 U. S., at page 296;
Cimiotti Unhairing Co. v. Am. Fur Ref. Co., 198 U. S., at page 410;
Motion Picture Co. v. Universal Film Co., 243 U. S., at page 510.

In the case of Cimiotti Unhairing Co. v. American Fur Ref. Co., *supra*, 198 U. S., at page 410, this Court holds as follows:

> "In making his claim the inventor is at liberty to choose his own form of expression, *and while the courts may construe the same in view of the specifications and the state of the art, they may not add to or detract from the claim.* And it is equally true that as the inventor is required to enumerate the elements of his claim, *no one is an infringer of a combination claim unless he uses all the elements thereof.* Shepard v. Carrigan, 116 U. S., 593, 597; Sutter v. Robinson, 119 U. S., 530, 541; McClain v. Ortmayer, 141 U. S., 419, 425; Wright v. Yuengling, 155 U. S., 47; Black Diamond Co. v. Excelsior Co., 156 U. S., 611, 617; Walker on Patents, Sec. 349. This principle is particularly important when we come to consider the 'stationary card above the stretcher-bar,' *an element of the eighth claim.*" (Italics ours.)

In Motion Picture Co. v. Universal Film Co., *supra*, at page 510 of 243 U. S., after referring to the patent statutes, this Court lays down the following rule long estab-

lished by it as applicable to the patent law and the construction of patents, a part of what we are about to quote having been purposely italicized by us:

> "1st. The scope of every patent is limited to the invention described in the claims contained in it, *read in the light of the specification.* These so mark where the progress claimed by the patent begins and where it ends that they have been aptly likened to the description in a deed, which sets the bounds to the grant which it contains. *It is to the claims of every patent, therefore, that we must turn when we are seeking to determine what the invention is, the exclusive use of which is given to the inventor by the grant provided for by the statute,*—'He can claim nothing beyond them.' Keystone Bridge Co. v. Phoenix Iron Co., 95 U. S., 274; Railroad Co. v. Mellon, 104 U. S., 112, 118; Yale Lock Mfg. Co. v. Greenleaf, 117 U. S., 554, 559; McClain v. Ortmayer, 141 U. S., 419, 424."

As to the doctrine announced and applied by this Court in Keystone Bridge Co. v. Phoenix Iron Co., 95 U. S., 274, 278, cited in McClain v. Ortmayer, at page 424 of 141 U. S., *supra*, that doctrine and that Keystone Bridge case are expressly followed and cited by this Court in many of its later decisions, to some of which we shall now refer, as follows:

> Railroad Co. v. Mellon, 104 U. S., at page 118;
> Duff v. Sterling Pump Co., 107 U. S., at page 639;
> Yale Lock Co. v. Greenleaf, 117 U. S., at page 559;
> White v. Dunbar, 119 U. S., at page 52;
> McClain v. Ortmayer, 141 U. S., at page 424, supra;
> Coupe v. Royer, 155 U. S., at page 576;
> Motion Picture Co. v. Universal Film Co., 243 U. S., at page 510;
> Minerals Separation v. Butte etc. Mining Co., 250 U. S., at page 347.

All the cases last above cited and referred to hold, to use the very language of this Court used in deciding them: "The scope of letters patent must be limited to the invention covered by the *claim*, and while the *claim* may be *illustrated*, it cannot be *enlarged* by language used in other parts of the specification" (the italics are ours).

The same principles as those announced by this Court in Keystone Bridge Co. v. Phoenix Iron Co., *supra*, which principles are strictly applicable to the facts in the case at bar in respect to the Smith patents relied upon by petitioner in this case, are announced and applied by this Court in Weber Electric Co. v. Freeman Electric Co., 256 U. S., 668, 677, where this Court, referring to its decisions in Shepard v. Carrigan, 116 U. S., 593, 598, and Hubbell v. United States, 179 U. S., 77, 80, expressly holds: that, where it appears that the patentee, in order to obtain his patent, has presented and obtained a specifically narrow claim, he may not afterwards "*by construction or resort to the doctrine of equivalents*" *give to it a larger scope which it might otherwise have had but for the limitations and restrictions stated in the claim and by which the patentee has undertaken to define precisely what he claims as his invention.*

So, also, in the quite recent decision of this Court in I. T. S. Co. v. Essex Co., 270 U. S., 429-455, the same principles as those just stated above and which are strictly applicable to the facts in this case and to the history of the Smith letters patent in suit are re-affirmed by this Court.

The fact that Judge Burns in his opinion should have so thoroughly misunderstood, or misapplied, the law to the facts in the case before him is all the more surprising in view of what we are about to say.

The decision of this Court in the case of White v. Dunbar, 119 U. S., 47, was rendered in 1886, on appeal from

the decree of the then Circuit Court of the United States for the Eastern District of Louisiana, in a suit for infringement of letters patent. In that case this Court, in reversing the decree of the Court below, which had found the patent valid and infringed, and in laying down rules for the proper interpretation of letters patent, declared as follows, at pages 51-52:

> "Some persons seem to suppose that a claim in a patent is like a nose of wax which may be turned and twisted in any direction, by merely referring to the specification, so as to make it include something more than, or something different from, what its words express. The context may, undoubtedly, be resorted to, and often is resorted to, for the purpose of better understanding the meaning of the claim; but not for the purpose of changing it, and making it different from what it is. The claim is a statutory requirement, prescribed for the very purpose of making the patentee define precisely what his invention is; and it is unjust to the public, as well as an evasion of the law, to construe it in a manner different from the plain import of its terms. This has been so often expressed in the opinions of this court that it is unnecessary to pursue the subject further. See Keystone Bridge Co. v. Phoenix Iron Co., 95 U. S., 274, 278; James v. Campbell, 104 U. S., 356, 370".

Since then and until the District Court for the Eastern District of Louisiana rendered its opinion (by Burns, J.) in the said case of Smith v. American Electric Rabbit Racing Assn., 21 Fed. (2nd), 366, the principle announced by this Court in White v. Dunbar, *supra*, and in other decisions hereinbefore cited seems to to have been recognized and applied in the Fifth Circuit. For example, in the case of Dry Hand Mop Co. v. Squeez-Ezy Mop Co., decided Feb. 17, 1927, reported in 17 Fed. (2nd). 465, the C. C. A.

for the 5th Circuit not only expressly cites and follows the said decision of this Court in White v. Dunbar, *supra*, but holds (see page 466 of 17 Fed., 2nd Series) as follows, the italics in the following quotation being our own:

> "(1) Patent numbered 1,426,084 contained six claims. It was a combination patent; none of the six claims being new. *Its novelty, if any, was altogether in the combination.* The law is conceded by counsel to be that, to constitute infringement of such a patent, *the infringer must be shown to have used every ingredient of the combination. An omission of any one element prevents infringement.* Central Foundry Co. v. Coughlin (C. C. A.), 141 F. 91; Dunbar v. Meyers, 94 U. S. 187, 24 L. Ed. 34; Roberts v. Nail Co. (C. C.), 53 F. 916." • • •
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> "(4) The record also shows clearly that plaintiff's assignor was required to, and did in fact, at the behest of the Patent Office, change his first claim by substituting 'beyond' for 'over' in that claim, and that he voluntarily carried the same change into claims 2, 3, and 4. *Claims containing self-imposed limitations are not infringed by structures which omit the self-imposed restrictions.* Keystone Bridge Co. v. Phoenix Iron Co., 95 U. S., 274, 24 L. Ed. 344; Burns v. Meyer, 100 U. S., 671, 25 L. Ed. 738; White v. Dunbar, 119 U. S., 47, 7 S. Ct., 72, 30 L. Ed. 303; Morse Chain Co. v. Link Belt Co. (C. C. A.), 189 F., 584; Thacher v. Transit Construction Co. (D. C.), 228 F., 905. Affirmed Id. (C. C. A.), 234 F. 640. The patentee, and plaintiff, his assignee, are *precluded from invoking the principle of equivalency as against defendant's use of a cushion formed by bringing the loops of the strand together over the end of the mop handle.*"

Nevertheless and notwithstanding the fact that Judge Burns in his said opinion refers to the decision of the C. C. A. for the 5th Circuit in the said case of Dry Hand Mop

Co. v. Squeez-Ezy Mop Co. (see Judge Burns' opinion, at page 369 of 21 Fed., 2nd Series), and notwithstanding the fact that the principles announced by the C. C. A. for the 5th Circuit in the said Dry Hand Mop Co. case, quoted from *supra*, were strictly applicable to the suit in the 5th Circuit before Judge Burns, he seems to have utterly failed to recognize that those principles and the decisions of the Supreme Court cited and quoted from by the C. C. A. for the 5th Circuit in the said Dry Hand Mop Co. case were strictly applicable to the facts in the case before him. He ignored, or failed to apply, those principles to the facts in the case before him, and on appeal to the C. C. A. for the 5th Circuit, notwithstanding what that Court had previously decided in the Dry Hand Mop case *supra*, that Court affirmed the "*conclusions*" which had been reached by Judge Burns, and thereupon affirmed the interlocutory decree which the District Court had entered in that case of Smith v. American Electric Rabbit Racing Assn.

Before dismissing our consideration of the said opinion of Judge Burns in 21 Fed. (2nd), 366-376, inasmuch as Judge Burns in his said opinion refers to and invokes the decision of this Court in Winans v. Denmead, 15 Howard, 330, we deem it proper to consider that decision of this Court, in order to show that, in its facts and in its application of the law to those facts, this Court has decided nothing warranting the conclusions that the defendants' devices in the said case in the 5th Circuit infringed the Smith letters patent in that suit—the same three Smith letters patent which are before this Court in the case at bar.

THE CASE OF WINANS V. DENMEAD.

The opinions of this Court in the above case, reported in 15 Howard, pages 338 to 348, were delivered in 1853. As then constituted, the Chief Justice of this Court was Mr. Justice Taney, and the Associate Justices were Justices M'Lean, Wayne, Catron, Daniel, Nelson, Grier, Curtis and Campbell. The Court was divided in the determination of the only issue presented in that case—the issue of *infringement*—, the *validity* of the patent not being questioned, as the Court points out in its opinion. Mr. Justice Curtis delivered the majority opinion, finding the patent infringed; but there was a vigorous dissenting opinion, by Campbell, J., in which dissent Taney, C. J., and Justices Catron, Daniel and Campbell concurred.

The plaintiff's patent in that suit was a patent granted to plaintiff on the 26th of June, 1847, and was granted when the Patent Act of 1836 was in force, to which last named Act this Court refers in its opinion in that case, at page 341 of 15 Howard.

Section 6 of the Patent Act of 1836 is set forth, among other places, in the 5th edition of Walker on Patents, at pages 862 and 863 thereof. The provisions of that Sec. 6 of the Patent Act of 1836, in respect to the requirements of the specification and claims, were not quite as strict as the provisions of the present statute on that subject—the provisions of Sec. 4888 R. S. U. S., the statute now in force and which was in force at the time the Smith letters patent in suit were applied for and granted.

To point out the exact difference, in these respects, between Sec. 6 of the Patent Act of 1836 and Sec. 4888 R. S. U. S., we set forth below, in different columns, the relevant part of Sec. 6 of the Patent Act of 1836 and Sec. 4888 R. S. U. S.

RELEVANT PART OF SEC. 6 OF THE PATENT ACT OF 1836.

* * * "But before any inventor shall receive a patent for any such new invention or discovery, he shall deliver a written description of his invention or discovery, and of the manner and process of making, constructing, using and compounding the same, in such full, clear, and exact terms, avoiding unnecessary prolixity, as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of any machine, he shall fully explain the principle, and the several modes in which he has contemplated the application of that principle or character by which it may be distinguished from other inventions; and shall particularly specify and point out the part, improvement, or combination, which he claims as his own invention or discovery. He shall, furthermore, accompany the whole with a drawing or drawings, and written references, where the nature of the case admits of drawings," * * *

SEC. 4888 R. S. U. S.

"Before any inventor or discoverer shall receive a patent for his invention or discovery, he shall make application therefor, in writing, to the Commissioner of Patents, and shall file in the Patent Office a written description of the same, and of the manner and process of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of a machine, he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions; and he shall particularly point out and *distinctly claim* the part, improvement, or combination which he claims as his invention or discovery. The specification and claim shall be signed by the inventor." (Italics ours.)

It may be worthy of note that the words "*distinctly claim*", present in Sec. 4888 R. S. U. S., are not present in the above quoted excerpt from Sec. 6 of the Patent Act of 1836; indeed, those words "*distinctly claim*" are not present at all in Sec. 6 of the Patent Act of 1836. It is fair to presume that Congress had a purpose in inserting the words "*distinctly claim*" in Sec. 4888 R. S. U. S.

It should further be noted that, so far as appears from the majority and dissenting opinions of this Court in the case of Winans v. Denmead, the invention which Winans disclosed, described and illustrated in his patent was broadly new with him and involved a new principle of construction and operation, all as fully pointed out by the majority opinion of this Court in that case.

The new and valuable invention disclosed by plaintiff's patent in that case is thus set forth in the majority opinion, at page 339:

> "Without going into unnecessary details, or referring to drawings, it may be stated that the structure, described by this patent, is the body of a burden railroad car, made of sheet iron, the upper part being cylindrical, and the lower part in the form of a frustum of a cone, the under edge of which has a flange secured upon it, to which flange a movable bottom is attached. This bottom is made movable, in order to discharge the load through the aperture left by removing it.
>
> To understand the mode of operation introduced and employed by means of this form of the car body, it is only necessary to state, what appears on the face of the specification, and was testified to by experts at the trial as correct, that, by reason of the circular form of the car body, the pressure of the load outwards was equal in every direction, and thus the load

supported itself in a great degree; that, by making the lower part conical, this principle of action operated throughout the car, with the exception of the small space to which the movable bottom was attached; that, being conical, the lower part of the car could be carried down below the truck, between the wheels, thus lowering the center of gravity of the load; that the pressure outwards upon all parts of the circle being equal, the tensile strength of the iron was used to a much greater degree than in a car of a square form; and finally, that this form of the lower part of the car facilitated the complete discharge of the load through the aperture, when the bottom was removed."

The claims of the patent as set forth in the majority opinion of this Court were as follows, at page 341:

"What I claim as my invention, and desire to secure by letters-patent, is making the body of a car for the transportation of coal, etc., in the form of a frustum of a cone, substantially as herein described, whereby the force exerted by the weight of the load presses equally in all directions, and does not tend to change the form thereof, so that every part resists its equal proportion, and by which, also, the lower part is so reduced as to pass down within the truck frame and between the axles, to lower the center of gravity of the load without diminishing the capacity of the car as described.

I also claim extending the body of the car below the connecting pieces of the truck frame, and the line of draft, by passing the connecting bars of the truck frame, and the draft bar, through the body of the car, substantially as described."

In that case, the defendant's car, in all respects, corresponded with the car described and claimed in plaintiff's patent, except that the body of the car, instead of being

in the form of the frustum of a cone (the particular form illustrated, described and claimed in plaintiff's patent) was of octagonal form, with an octagonal pyramidical base. In finding that, except as to the particular form or contour of the body of the car, the defendant had copied the new invention of plaintiff's patent, and that, in the particular circumstances of that case, as defendant had used every element, or the clear mechanical equivalent of every element, of the broadly new invention made and claimed by the patentee, and therefore had infringed that patent, the majority opinion of this Court states, at page 344 of 15 Howard, as follows:

> "How is a question of infringement of this patent to be tried? It may safely be assumed, that neither the patentee nor any other constructor has made, or will make, a car exactly circular. In practice, deviations from a true circle will always occur. How near to a circle, then, must a car be, in order to infringe? May it be slightly elliptical, or otherwise depart from a true circle, and, if so, how far?
>
> In our judgment, the only answer that can be given to these questions is, that it must be so near to a true circle as substantially to embody the patentee's mode of operation, and thereby attain the same kind of result as was reached by his invention. It is not necessary that defendant's cars should employ the plaintiff's invention to as good advantage as he employed it, or that the result should be precisely the same in degree. It must be the same in kind, and effected by the employment of his mode of operation in substance."

After all, it may be seriously questioned whether there was any real difference, even as to form, between the device illustrated and described in plaintiff's patent in that case and that of the defendant. In discussing the said decision

of this Court and speaking of this very question, the learned C. C. A. for the 6th Circuit, in the case of D'Arcy Spring Co. v. Marshall etc. Co., 259 Fed., at page 238, states:

> "In Winans v. Denmead, 15 How. 341, 14 L. Ed. 717, a claim to the frustum of a cone was held to include as an equivalent the frustum of an octagonal pyramid. It is doubtful whether there was so much discrepancy between the letter of the claim and the defendant's form as has been thought, since a cone is a pyramid with an infinite number of sides, or, as recited in the opinion, 'polygon of many sides would be equivalent to a circle'; but, passing by this feature of identity, it is clear that the difference was merely in form, and that, in operation and functions and effect, the two were identical. The difference in form did not stand for anything else, and the rule of equivalency so strict as to exclude from the monopoly one form and include the other would tend to raise doubt as to the existence of any patentable invention."

In view of the facts before this Court in Winans v. Denmead, nothing that this Court said and decided in that case is warrant for holding that where the machine or device, as illustrated, described and claimed in plaintiff's patent (interpreting the claims in the light of the thing as disclosed in the specification, as this Court has repeatedly held must be done) specifies a certain number of elements, with functions, purposes or conditions assigned to such elements (as, for example, a wheel at the outer edge of the arm, to support the arm at that point, the arm being *hinged* at its inner end, to permit of up and down play or movement of the arm independently of the movement of the car)—that, in such a case (the case at bar and the case before Judge Burns), a device or machine which does

not have in it, or as part of it, such element (said wheel, in this case) and is *not hinged* to the car, and has not, in its arm, said capacity of up and down movement independently of the movement of the car, nevertheless infringes claims which specifically call for a structure having such element and such conditions and capacities.

To so interpret this Court's opinion in Winans v. Denmead, *supra* (as Judge Burns, in effect, did in his opinion in 21 Fed., 2nd, 371), is not only to misinterpret that decision of this Court, but also to decide contrary to and in the very teeth of the rule and principles so clearly laid down by this Court in Vance v. Campbell, 1 Black (66 U. S.), 427, and followed in the host of this Court's later decisions reaffirming the doctrine of Vance v. Campbell, all of which decisions we have so fully reviewed, cited and quoted from *supra*.

It would, therefore, seem clear, not only that Judge Burns in his said opinion, which opinion is so much relied upon by petitioner here, grossly erred, not only in his reasoning, as applied to the facts in the case before him, but also in his conclusions; but that the C. C. A. for the Fifth Circuit, in agreeing with the erroneous "*conclusions*" reached by Judge Burns, thereby affirming his interlocutory decree in that case, also clearly erred.

On the other hand, it would seem clear that the Courts below in the case at bar, in refusing to follow the said opinion of Judge Burns, or the C. C. A. for the Fifth Circuit, which affirmed the decree entered by Judge Burns, decided rightly and in harmony with the decisions of this Court in the analogous cases cited and referred to herein.

And it also appears, from what we have said *supra*, that in its opinion in Magic City Kennel Club, Inc., et al., Appellants, v. Smith (a suit by this petitioner in which two

of the identical Smith patents—Nos. 1,379,224 and 1,507,-440—before this Court in the case at bar were in issue), the C. C. A. for the Tenth Circuit (see 38 Fed., 2nd, 170) decided rightly, when, in refusing to follow said opinion of Judge Burns, or the decision of the C. C. A. for the Fifth Circuit, it held, in harmony with the decisions of this Court in analogous cases, that neither of said patents had been infringed by devices substantially identical with defendants' devices in said case in the Fifth Circuit and with respondents' devices in the case at bar.

PAUL BAKEWELL,
Solicitor for Respondents.

St. Louis, February, 1931.

SUPREME COURT OF THE UNITED STATES.

No. 315.—October Term, 1930.

Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, Petitioner, *vs.* Springdale Amusement Park, Limited, Paul M. Williams and Gerald Brown.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[April 13, 1931.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

This is a suit for the infringement of letters patent No. 1,379,224, No. 1,507,440, and No. 1,507,439, relating to devices for dog races. Judgment in the District Court dismissing the complaint was affirmed by the Circuit Court of Appeals. 39 Fed. (2d) 92; 40 Fed. (2d) 173. This Court granted a writ of certiorari because of conflict with a decision of the Circuit Court of Appeals for the Fifth Circuit. *American Electric Rabbit Association* v. *New Orleans Kennel Club*, 26 Fed. (2d) 1016.

Patent No. 1,379,224 was before this Court in *Smith* v. *Magic City Kennel Club*, decided February 25, 1931. 282 U. S. —. Referring to the prior art, the Court found that the patentee's improvement was in a limited field. There was no invention in a combination consisting of a covered rail track, conveyor car and an arm projecting over the course and connected with a mechanical lure carried before racing dogs. The patent could be sustained only by virtue of the distinctive feature of the arm employed. This was described in claim 1 as "an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure, and a wheel rotatably mounted on and supporting the arm at the projecting end thereof", and, in claim 2, as "a horizontally extending arm hinged to said car extending midway of said course, a wheel rotatably mounted near the end of said arm, and resting upon the ground, a platform supported by said arm and a lure or quarry mounted upon said plat-

form for attracting the dogs". The Court reached the conclusion that a rigid, horizontal arm, without hinge or wheel, was not the subject of either claim. In this view, the device of the defendant does not infringe.

Patent No. 1,507,440, relating to "housing for conveyor cars and tracks," we have held to be invalid for want of invention. *Smith* v. *Magic City Kennel Club, supra.*

Patent No. 1,507,439 is for an improvement in starting cages for racing dogs. The single claim is as follows:

"In a starting cage for racing dogs, a frame comprising a box-like structure divided into a plurality of compartments and comprising walls formed of wire mesh partially covered with fabric, individual rear doors for each of the compartments and a single front door hinged at its upper end to the top walls of the frame, divergent inclined members secured to the top of the said frame and extending upwardly and outwardly beyond the face of the front door and having their outer ends in the plane of the side walls of the box-like structure, springs secured to the outer ends of said inclined members and to the door and lying in the plane of the hinges, and a latch at the bottom of the cage for coaction with the lower edge of the front door to hold the front door normally closed against the tension of said springs, said springs adapted to raise the front door upon release of the latch."

In the light of the proceedings in the Patent Office upon the rejection of earlier claims, the claim can have but a narrow application. We agree with the Circuit Court of Appeals that the particular sort of spring support and the wire mesh partitions partially covered with fabric, as well as the other elements, are but forms of construction within the range of ordinary mechanical skill. There was an utter absence of invention justifying the issue of this patent.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.